

# TRKC INC

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July 17, 2002

Lawrence Norton, General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

Subject: MUR 5155—TRKC Inc. response to June 11, 2002 letter from FEC Chairman David M. Mason

Dear Mr. Norton:

This responds to the subject letter in which TRKC Inc. ("TRKC") was informed of the finding of the Federal Election Commission ("Commission" or "FEC") on June 3, 2002, "that there is reason to believe" TRKC has violated 2 U.S.C. § 438(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act").

For the reasons set forth in this letter and explained in more detail in another letter enclosed herewith, TRKC and its undersigned officers dispute this finding, and respectfully urge the Commission to terminate any further consideration of this matter at an early date. In addition, we believe the comments and legal analysis set forth persuasively demonstrate that the Commission, while presumably acting in good faith, has misinterpreted and misapplied current law in its "Reason To Believe" ("RTB") finding on June 3. TRKC accordingly requests that the finding against TRKC be rescinded or vacated before the closure of MUR 5155 and its placement on the public record.

As the Commission knows, the current state of the law with respect to the interpretation of §438(a)(4) is derived from the statutory language, its legislative history, Commission regulations at 11 CFR 104.15, the explanation and justification for the regulations, and Commission advisory opinions applying those provisions. In addition, the interpretation and application of those provisions in past court decisions has significant relevance.

The pertinent statutory language in §438(a)(4) provides that information copied from reports filed pursuant to the Act "may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than [using political committee names to solicit contributions from them]." The regulations amplify and clarify the limited scope of the

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statutory language providing that the restrictions on use of information taken from reports filed with the FEC only apply to information that identifies individual (that is, natural person) contributors to reporting political committees by giving the names and addresses of those individuals. The restriction bars the use of that information by any person for solicitations of any contributions, whether the nature or purpose of the solicitation is political, charitable or personal. The cited restriction also prohibits use of the contributor identifying information to solicit for commercial purposes; namely, to pursue a marketing venture or outreach by direct mail or other means that offers a valuable product or service for sale to the recipient of the mailer or other form of communication disseminated by the seller.

TRKC understands that the RTB finding is not based upon any evidence or information held by the Commission that would suggest TRKC has engaged in any contribution solicitation activity using individual contributor information copied from reports filed with the Commission. Instead, the finding alleges that TRKC is using contributor information "for commercial purposes" and that such use, according to the Commission's view, is prohibited by §438(a)(4). Accordingly, our response will focus on this aspect of the contributor information use restriction.

The restriction on use of contributor information "for commercial purposes" is broadly stated in the Act. However, based on legislative history and sound public policy considerations, the Commission has correctly given the phrase a more precise meaning and interpretation through its regulations and numerous advisory opinions. In the same vein, Federal court opinions have limited the scope of this phrase, sometimes to avert constitutional issues that could arise if the language was interpreted as broadly as some would mistakenly suggest or argue.

Commission regulations clarify that the commercial use restriction does not apply to the use of information, taken from FEC reports, in newspapers, magazines, books or similar communications as long as the principal purpose of the communication is not to communicate contributor information in order to solicit contributions from the person, nor to communicate with the person for any commercial purpose. 11CFR104.15. The Explanation and Justification for the regulation explains that using contributor information in various communications is permissible so long as the principal purpose is not to communicate contributor information for any commercial purpose. 45 *Fed. Reg.* 15, March 7, 1980.

The clear implication of the cited regulations and their history is that all uses of contributor information in communications similar to newspapers or magazines are not prohibited by the Act. In a long line of past advisory opinions, the Commission has consistently reaffirmed the limited scope of the commercial use restriction in §438(a)(4). The most recent opinion on the cited provision presents a specific example of how the commercial use restriction applies and when it does not apply.

In Advisory Opinion 1998-04, the Commission considered the commercial use of contributor information, taken from FEC contributor record databases, in marketing materials

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that would be used by a software systems corporation with capacity to perform special analyses of transaction databases. The contributor records (including individuals' names, city and postal zip code, but not street addresses) were to be used only for demonstration purposes in the corporation's marketing materials. This marketing effort was clearly a commercial venture, and thus a commercial use of the FEC database, even though the corporation was not contacting any name listed on an FEC report and also warned its customers not to do so. This use was not problematic for the Commission. Citing numerous earlier opinions issued since 1981, the 1998 opinion reiterates that the principal purpose of restricting the use of information copied from reports (filed with the FEC) is "to protect individual contributors from having their names sold or used for commercial purposes." [Citations omitted.] The Commission concluded that the corporation would not be selling contributor information from FEC databases and its clients would not access the databases through the corporation's services. In this context the Commission relied upon a comparison to the unlawful use by Legi-Tech of FEC contributor databases, stating that Legi-Tech had reproduced (in electronic format) contributor information, including the names and addresses of persons who had made political contributions, and then sold direct access to this information for use by its customers in their own fundraising efforts. The Commission's position that Legi-Tech had violated §438(a)(4) was upheld and affirmed in a reported Federal court decision. *Federal Election Commission v. Legi-Tech, Inc.*, 967 F.Supp. 523, 535 (D.D.C. 1997).


As is explained in more detail in the accompanying letter, while TRKC is pursuing a commercial venture that includes the collection, storage, analysis and retrieval of a database, parts of which may be derived from information in reports filed with the Commission, it is manifestly not seeking clients by using contributor information copied from those reports. Nor is TRKC selling or otherwise providing that information to others for their commercial solicitation of the contributors. The essence of the commercial use restriction in 438(a)(4) is to bar the use of contributor information for the marketing of valuable goods or services or to engage in customer prospecting in advance of an explicit commercial marketing solicitation. TRKC does not use contributor identification data for either of those purposes. Instead, it facilitates access to campaign finance data in customized and generic formats that enable news media organizations and others to utilize and interpret that data in many different contexts and from many differing perspectives.

Respectfully submitted,

TRKC Inc.

By:

  
Kent C. Cooper, Vice President

  
Tony Raymond, Vice President

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Lawrence Norton, General Counsel  
Federal Election Commission  
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Washington, D.C. 20463

Subject: MUR 5155 -- TRKC Inc. response to June 11, 2002 letter from FEC Chairman David M. Mason

Dear Mr. Norton:

This letter further responds to Chairman Mason's letter of June 11, 2002, with regard to Matter Under Review 5155 and it supplements an accompanying letter (three pages) of the same date. This matter is a preliminary determination of the Federal Election Commission ("the Commission") that TRKC Inc. ("TRKC"), has violated 2 U.S.C. § 438(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act").

In response to this recent action, TRKC wishes to provide some basic facts and information that will hopefully answer any questions the Commission, or particular Commissioners, may have with respect to TRKC business operations and the services TRKC renders to our clients.

Our counsel, Bradley Litchfield who, as you know, was Associate General Counsel for Policy at the Commission and served there from 1975 until this June, has reviewed and advised us on this response. He has assisted us in reviewing the long history and evolution of the restricted use policies for certain contributor information copied from reports filed with the Commission, especially as documented in Commission advisory opinions and court cases. This review is set forth below.

## COMMENTS ON FEC ACTION

TRKC is surprised and disappointed that some of the information presented in the subject letter is either not accurate or incomplete.

For example, it appears that the text claimed to be from the "What We Do" portion of the TRKC's PoliticalMoneyLine site is out of date. Although TRKC has no way of knowing this for

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certain, it may have been copied from an old and very dated 'book marked' page on a Commission computer. TRKC knows the Commission and its staff want to be accurate and rely only upon the most current information and references to our business services and operations. That would include the use of "live pages" from the Internet and not stale 'book marked' pages.

It also appears that the text of the TRKC "What We Do" page was not properly notated with respect to sections that were omitted. There is no indication of where material was deleted. TRKC hopes that the full text is available to the Commissioners and Commission staff.

On a more personal note, it is surprising and disappointing that neither the Commissioners nor any Commission employee has contacted us to ask questions or explain any of our activities. This seems strange since the Commissioners and most of its employees know the three of us very well and have worked with us for many years. Kent Cooper worked at the Commission for 22 years and Tony Raymond for 17 years. Kirk Ervin worked at the Federal Election Commission for five years.

The offices of TRKC and the four full-time staff are located in Washington, D.C., share the same telephone area code and are within a 10-15 minute walk of the Commission's offices. And yet there was not a phone call, or a contact of any type indicating that there was a question or concern about our activities.

## TRKC OPERATIONS

The web site of TRKC, called PoliticalMoneyLine ([www.PoliticalMoneyLine.com](http://www.PoliticalMoneyLine.com) and its mirror sites [www.FECInfo.com](http://www.FECInfo.com) and [www.TRAY.com](http://www.TRAY.com)), provides certain campaign finance data to the general public at no charge. Our purpose is not to provide mailing lists or to permit use of the information for soliciting contributions. This data is similar to the data that the Commission makes public on a regular basis through its Public Records Office, its Direct Access Program, its Press Office, and its web site.

TRKC's PoliticalMoneyLine site also provides free news items on more than half of its home page, [www.politicalmoneyline.com](http://www.politicalmoneyline.com). See Exhibit A. This free service is usually updated on a weekly basis and seeks to inform the public about items of interest in the money-in-politics world. There is no charge for access to this information.

Because of its simple layout, easy to read headings, speed of presentation, and organizational structure, the general public has found it well worth using. Numerous national news articles have highlighted the free site and indicated how helpful it is. See Exhibit B. This year the site was nominated for a "Webby" award by the International Association of Digital Arts and Sciences for its political information available to the public.

In addition, the PoliticalMoneyLine.com site provides free access to a variety of easy to read and understand layouts of campaign finance data. For example, one may quickly locate a federal candidate's profile page highlighting the current election cycle with:

- a. Candidate's summary figures.

- b. Listing of PAC money by Standard Industrial Code category.
- c. Total of coordinated expenditures by party organizations.
- d. Total of independent expenditures for or against the candidate.
- e. Photo for current Members of Congress.
- f. Listing of their party affiliation, state and district number.
- g. Listing of any leadership PACs that TRKC identified.
- h. Listing of any joint fundraising committees.
- i. Listing of any foundations they fund raise for.
- j. Listing of any IRS 527 entities that TRKC has connected them with.
- k. Listing of receipts by date.
- l. Listing of receipts by state.
- m. Listing of receipts from one state to another.
- n. Listing of all their authorized committees.
- o. Link to the image of their personal financial disclosure report, if candidate is current Member of Congress.

PoliticalMoneyLine also provides a free set of references to political information on the presidential races, such as upcoming dates and events.

The PoliticalMoneyLine site also provides for free a quick and easy to understand layout of the contributions received by a PAC/Party committee and the contributions that PAC/Party committee has made.

PoliticalMoneyLine also provides a free listing of the top ranking candidates in receipts, disbursements, cash-on-hand at the beginning of the period, cash-on-hand at the end of the period, contributions from individuals, contributions from PACs, loans from candidates, and outstanding debts.

PoliticalMoneyLine also provides a free listing of the top ranking PACs in receipts, disbursements, cash-on-hand, etc.

PoliticalMoneyLine also provides a free listing of the top Standard Industrial Code categories for PAC money.

PoliticalMoneyLine also provides a listing of new corporate PACs in chronological order.

PoliticalMoneyLine also provides data on the political activity of international labor organizations. This includes data from the Department of Labor, some from IRS 527 reports, and PAC data.

PoliticalMoneyLine also provides a listing of large cases involving illegal corporate political activity. Some of this information comes from the Department of Justice, and state enforcement agencies, as well as campaign finance agencies.

PoliticalMoneyLine also provides a free search for the public to search the contributions/donations of an individual over the past twenty years.

PoliticalMoneyLine also provides a free search for the public to search the first word in the occupation/employer block of the contribution record over the past twenty-years.

Enhancements made by TRKC to campaign finance data involve compiling campaign finance figures from different sources and providing summary reports to our subscribers via the web. This includes enhanced, specially coded and cross-referenced money in politics data, unique identifiers, standard industrial codes, issue codes, specialized tabulations, searches, rankings, arrangements of data and software that has been developed by and for TRKC. This data and software permits more analysis, arrangements and cross-referencing of the data. TRKC feels these enhancements are very helpful to reporters, researchers, and academics that wish to study specific political finance in more detail. This data is similar to information published in newspapers, magazines and other similar subscription services.

For example, the following are some of the enhancements that TRKC provides in its Internet publications:

1. FECInfoPro –

- a. Assignment of a unique identification number to each and every organization moving political money. This is the key to our “connecting the dots” strategy. By identifying each and every entity with a unique identifier, TRKC is able to have a “key index” in each database that permits TRKC to cross-reference and connect different types of political money (disclosed under different laws, filed with many agencies, or put into political information databases compiled by TRKC staff) from the same organization.
- b. Assignment of a Standard Industrial Code classification number (SIC code) to each organization.
- c. Brief description of each organization.
- d. Electronic links to all affiliated or connected organizations of the same organization.
- e. 20-year bar chart of political money receipts.
- f. 20-year table of total contributions to federal candidates with party percentages.
- g. Cycle total of funds given to national party committees.
- h. Cycle total funds given to leadership entities.
- i. Cleaned up lists of all soft money given by an organization and subsidiaries or affiliated organizations (no matter what spelling or name is used by the national party receiving committee).
- j. Cross reference to communication costs reports.
- k. Cross reference to Municipal Securities Board G-37 and G-38 reports.
- l. Cross-referencing of certain executives.
- m. Lists of federal lobby reports and spending amounts for that organization.
- n. Access to searchable database of lobby registrations, lobby firms and registrants.
- o. Access to searchable database of lobby issues.

- p. Access to a six-month lobby report listing rankings of organizations that lobby, industry breakdowns, and detailed listings of clients, registrants, and their total dollars spent.
- q. Access to a database of IRS 527 filings with special search capabilities and images of reports.
- r. Access to a database of leadership entities, foundations, joint fundraising entities, legal defense funds, and IRS 527 entities.
- s. Access to arrangements of data by Congressional committees of Congress.

2. PACtracker

- a. Access to database of organizations arranged by interest group categories.
- b. Software to select and save groupings of organizations.
- c. Software to provide overall totals by industry or groupings, and detailed breakdowns by recipients, Committees of Congress, party, etc.

3. eAlert

- a. Software to select and save specific PACs, candidates and filers.
- b. Access to system to identify recent filings at FEC.
- c. System to send emails notifying recipient of new filings.
- d. Access to database of expenditure data aggregated by purpose of disbursement.

4. Subscriber Enhanced Employer Research

- a. Software to search for key word in occupation/employer blocks.

5. Electronic Filing Data Download

- a. System to easily download electronic filing in an easy to read format.

6. Disclosure Data Download

- a. System to easily download disclosure data in an easy to use format.

7. FECInfo Enterprise

- a. Development, layout and design for presenting data to the viewer on an Internet site.
- b. Hosting data to handle Internet access, storage, and communication lines.

8. Technical Assistance

- a. Teaching organizations and individuals about money in politics data, how data connects to other data, how timely the data is made available, and how often it is updated.
- b. Developing and creating electronic databases of non-FECA data from paper or electronic reports.
- c. Developing, creating, designing, storing and maintaining data bases for the Internet access.



Another benefit of TRKC's services is the unique updating capability of TRKC's systems. TRKC learned that the largest hurdle that must be overcome by organizations trying to research campaign finance information is to develop a system that will permit easy updating of databases once they are built. Some organizations simply prepare one shot reports or analysis on a yearly basis. However, most news organizations want the best and most current data possible throughout an election cycle. Although some media organizations have tried, they have given up due to the technical and campaign finance knowledge necessary to understand the very complex patchwork of codes, tables, and data the FEC makes available. Over time TRKC has developed specialized software that not only understands the data, but can handle weekly downloads of entire new databases, identifying new data and amended data, and immediately updating rankings, aggregate cycle totals, and thousands of pages throughout our web site that present figures.

## COMMENTS ON FEC FACTUAL AND LEGAL ANALYSIS

After a careful review of the subject letter, TRKC cannot ascertain precisely what actions by TRKC the Commission considers to be in violation of the Act. Other than inaccurately and incompletely restating informational material from the TRKC web site, TRKC does not find any specific act or actions that were cited by the Commission in the June 11, 2002 letter, that appear to violate the FECA, according to the FEC.

The closest TRKC can find is in the last paragraph, which includes a vague sentence starting with, "Notwithstanding the fact that TRKC Inc. provides free access to a basic compilation of FEC Reports..."

The Commission document does not identify or state specifically what "leads this Office to believe that at least some of the services it provides..." The use of the words "leads" and "some" strongly suggest that the Commission vaguely thinks something may be amiss in TRKC's operations, but it does not have any specific actions that would represent the basis of its finding of reason to believe a violation may have occurred.

It is also unclear from the Commission analysis what person or entity the Commission thinks used information for commercial purposes. The Commission states, "services it provides result in information derived from FEC Disclosure Reports being used for commercial purposes." Is the Commission saying persons who used data from TRKC used it for commercial purposes? If so, the June 11, 2002 letter provides no details. As an Internet-based publisher TRKC finds it hard to understand such a concern after the Commission issued Advisory Opinion 1999-17, by a 6-0 vote, which essentially exempted the Bush 2000 presidential campaign and other campaigns from being held responsible or liable for the Internet politicking of individuals outside the campaign, so long as the campaign does not know or accept the benefit from such efforts. The advisory opinion further indicated the campaign did not have to "police" the Web to see if Bush supporters are breaking campaign finance rules.

## COMMENTS ON LAW AND REGULATIONS

Although the Commission letter of June 11, 2002 outlines some very broad terms, TRKC was surprised that it did not provide a more complete history of the Act, regulations and Commission advisory opinions in regards to the restriction clause. Therefore, TRKC is concerned that the Commissioners may not have received a full briefing on what has been permitted by earlier Commission actions. TRKC relies on these public documents to formulate TRKC policies and procedures.

### SECTION 438(a)(4) APPLIES TO SOLICITING CONTRIBUTIONS AND PERMITS CERTAIN COMMERCIAL USE OF DATA

The structure of Section 438(a)(4) clearly relates to restrictions on use of contributor data by two classes of users. First, it restricts any person from soliciting contributions by using contributor data copied from FEC reports, and then it restricts commercial solicitations (e.g., for credit cards, long distance phone service, etc). This section only applies to soliciting contributions and soliciting commercial products.

In numerous advisory opinions the Commission has stated the principal intent of Section 438(a)(4) is to regulate use of contributor lists.

In Advisory Opinion 1991-16 (Feigenbaum) and 1995-9 (NewtWatch) and 1998-4 (White Oak), the FEC stated, "The Commission has previously stated that the principal purpose of restricting the sale and use of information copied from reports is the protection of individuals who have contributed to political committees from having their names sold or used for commercial purposes."

In Advisory Opinion 1980-78 (Richardson), the Commission states, "The prevention of list brokering, not the suppression of financial information, is the purpose of 2 U.S.C. § 438(a)(4) and 11 CFR 104.15."

In Advisory Opinion 1983-44 (Cass), the Commission stated:

"In a number of advisory opinions the Commission has relied on the legislative history of 2 U.S.C. § 438(a)(4), construing that the purpose of the restriction on use of information specifically is to protect contributor information and lists from being used for commercial purposes. See Advisory Opinions 1981-38, 1980-101, 1980-78 and 1977-66, copies enclosed. Moreover, the Commission previously has concluded, based on a similar factual situation presented in Advisory Opinion 1981-38, that names and addresses of candidates found in FEC records may be used for commercial purposes. In this opinion, a publisher was permitted to use information contained in candidate filings with the FEC, excluding the names and addresses of individual contributors, to provide leads for news articles and other information for use in a newsletter and to solicit subscriptions. The proponents of 2 U.S.C. § 438(a)(4) focused on protecting the privacy of the "very public spirited citizens" who make contributions to campaigns. Thus, the purpose of this section

was to protect contributor information and lists from being used for commercial purposes. 117 Cong. Rec. 30058 (1971)(Remarks of Senator Bellmon, amendment sponsor). Subsequent legislative history further reinforces this view. Specifically, the history of the 1979 Amendments to the Act indicates that a commercial vendor may compile information from FEC reports for the purpose of selling that information, but that the prohibition on copying and use of names and addresses of the individual contributors is crucial and so was maintained. H.R. Rep. No. 422, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 23 (1979). The purpose of 2 U.S.C. § 438(a)(4) is the prevention of list brokering, not the suppression of financial information. See Advisory Opinions 1980-78 and 1981-38. Cass proposes to use names and addresses of candidates derived from FEC reports to solicit candidates as clients and not any information relating to individual contributors. The use of such candidate information would not be prohibited by 2 U.S.C. § 438(a)(4)."

In Advisory Opinion 1998-4 (White Oak), the Commission indicated there can be permissible commercial use of information from reports filed with the Commission. The Commission stated, " Furthermore, the use of such data to detect fraud on the part of another campaign would fall outside of the commercial use restriction."

In Advisory Opinion 1988-2 (CBOE), the Commission even permitted a corporation to post FEC Report information for public viewing. The Federal Election Commission stated, "Accordingly the Commission concludes that CBOE's posting of receipt and disbursement reports of CBOEPAC, or other separate segregated funds, would not be prohibited use of contributor information under 2 U.S.C. § 438(a)(4) or Commission regulations at 11 CFR 104.15." The Federal Election Commission goes on to state, "CBOE's proposed posting of reports filed with the Commission is only informational. By displaying a copy of the FEC reports on its bulletin board, CBOE is a passive conduit of information. The reports, therefore, merely inform the reader and in no way encourage support of CBOEPAC or facilitate contributions to it."

In Advisory Opinion 1995-9 (NewtWatch), the Commission even permitted public posting of contributor information on the World Wide Web if it included the restriction clause and lacked mailing addresses and phone numbers. The opinion stated, "The Commission concludes that the inclusion of the lists of contributors to the Friends of Newt Gingrich committee does not violate 2 U.S.C. 438(a)(4). The lists do not appear to contain sufficient information to generate solicitations to Speaker Gingrich's contributors. Moreover, the public posting of contributor information on the World Wide Web site appears similar to the situation in FEC v PCD. "

In Advisory Opinion 1991-16 (Feigenbaum), the Commission again permitted commercial use by stating, "Based upon the apparent purpose of the prohibition, therefore, the Commission concludes that nothing in the Act or regulations prohibits the publication for sale of the names of individuals and entities who receive disbursements from political committees, unless those reported payees reflect the disposition of in-kind contributions made by individuals, or refunds of previous contributions made by individuals."

The Commission also permitted certain commercial use with its statements in Advisory Opinion 1980-101. The Commission permitted the use of any information (other than information on individual contributors) in a directory of PACs to be sold commercially.

#### TOO BROAD A READING OF SECTION 438(a)(4) MAY BE UNCONSTITUTIONAL

On April 16, 1984, the Missouri Supreme Court struck down as unconstitutional a provision of the state's election code, copied directly from the Federal Election Campaign Act, which prohibits the use of publicly disclosed campaign contribution information for political or commercial solicitations. Supreme Court of Missouri, En Banc, *Tom Ryan and Tom Ryan for Senate Committee v. James C. Kirkpatrick, Secretary of State, State of Missouri et. al.*, 669 S.W. 2d 215, (Missouri 1984).

"The listing of contributors is public domain, and any substantially lawful use can be made of the names, except for solicitation of funds," the court said in its decision, noting newspapers can publish contribution data which could then be converted into a mailing list. The court went on, "the state's compelling interest in protecting the privacy of contributors fades fast in the light of the publicity which the act generates through the operation of its (disclosure) provisions." Supreme Court of Missouri, En Banc, *Tom Ryan and Tom Ryan for Senate Committee v. James C. Kirkpatrick, Secretary of State, State of Missouri et. al.*, 669 S.W. 2d 215, (Missouri 1984).

On July 10, 1992, the U.S. Court of Appeals for the District of Columbia, sitting en banc, in *FEC v. International Funding Institute Inc.*, upheld the constitutionality of 2 U.S.C. §438(a)(4), but qualified its conclusion. *FEC v. International Funding Institute, Inc.*, 969 F.2d 1110 (D.C.Cir.1992). The Federal Election Commission's Selected Court Case Abstracts, 17<sup>th</sup> edition, states, "The court held that, under an intermediate level of scrutiny, section 438(a)(4) is constitutional as applied to defendants' conduct because it "advances an important government interest" (preserving the value of a political committee's contributor list) and "is no broader than is necessary to that task."

#### 11 CFR 104.15 IS VAGUE AND LACKS SPECIFICITY

Commission regulations at 11 CFR 104.15 do not provide any definition or explanation of the term "commercial purposes." If the Commission intended to expand the restriction beyond those soliciting contributions or engaged in commercial marketing activity, it would have been expected to do so in the regulations. The Commission has had over twenty-five years to detail and craft language in regards to commercial purposes, and it has not explained or amplified the vague phrasing, even though it has helpfully applied it in several specific factual contexts presented in many advisory opinions going back over 20 years. Lacking further definition or explanation it is clear the restriction only applies to soliciting contributions (or donations), and to soliciting individual contributor names for the purpose of commercial products or services.

TRKC would strongly encourage the Commission to consider new rulemaking in this area so that a "Bright Line" could be drawn between permissible and impermissible activity. Without such a "Bright Line" persons and organizations are left with uncertainty and unease at the least, and infringement of rights at the worst. TRKC does not, however, intend in this submission to petition the Commission to undertake rulemaking on this subject at this time.

TRKC further notes that several Commissioners have expressed considerable doubt and concern with respect to pursuing enforcement actions where phrases or terms from the Act, regulations or past advisory opinions were ambiguous, vague, or not precisely stated in a manner that would give clear notice to the regulated community of what conduct was prohibited or not prohibited. See Statement of Reasons of Commissioners Mason and Sandstrom (and others) on the presidential audits of the 1996 Clinton and Dole campaigns, June 24, 1999 [Commission not precluded from enforcing Act in "novel or unforeseen circumstances," but "absent controlling regulations...[its] enforcement standard [must] be the natural dictate of the language of the statute itself." [Cites omitted] In this matter, the controlling regulation adds only minimal clarification to the key statutory phrase "commercial purposes." That clarification itself indicates that TRKC's operations do not violate the Act because they do not represent use of contributor information to solicit individual contributors for a commercial transaction or relationship.

#### 11 CFR 104.15 PRIMARY PURPOSE RELATES TO SOLICITING CONTRIBUTIONS

In Advisory Opinion 1985-16 (Weiss), relating to 11 CFR 104.15, the FEC states, "The Commission has declared that the purpose of this restriction is to protect individuals who make contributions to campaigns from being victimized by list brokering."

In Advisory Opinion 1980-78 (Richardson), the Commission states, "The prevention of list brokering, not the suppression of financial information, is the purpose of 2 U.S.C. § 438(a)(4) and 11 CFR 104.15."

The Commission actually got it right when it published its explanation and justifications for new regulations after the passage of the 1979 Amendments to the FECA. In the Federal Register of March 7, 1980, vol., 45 No 47, page 15, it states:

"104.15 Sale and use restriction.

"This section essentially follows current regulation 11 CFR 104.13. It specifically states that the use of information copied from the FEC reports in newspapers, magazines, and similar communications is permissible so long as the principal purpose is not to communicate contributor information for any commercial purpose."

The Commission clearly linked commercial purpose to communicating contributor information for list brokering or solicitation purposes.

If the Commission does not link commercial purpose to communicating contributor information for list brokering or solicitations, one could easily imagine unusual results. For example, if a person or organization is lobbying on a certain critical issue before Congress and sent a staff person to the Commission's Public Records Office to collect lists of what groups had given to Members of Congress, and then returned to the office and the person used it to formulate a lobbying strategy, would that be a commercial use of Commission report data in violation of the law? Would it be a violation if they hired someone or a vendor to do the same thing? In either case, TRKC thinks not.

If the Commission does not link commercial purpose to communicating contributor information for list brokering or solicitations, then numerous other organizations might be considered to be in violation of the law. Organizations that provide Commission report data by itself or as part of products with fees include Lexis-Nexis, the Center for Responsive Politics, the National Institute on Money in State Politics, Campaign Study Group, the National Institute for Computer Assisted Reporting, as well as numerous law firms and research organizations that utilize federal campaign finance data for their clients.

#### 11 CFR 104.15 DOES NOT PROHIBIT COMMERCIAL USE OF DATA

Commission regulations at 11 CFR 104.15 clearly state, "The use of information, which is copied or otherwise obtained from reports filed under 11 CFR part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communication is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes."

It is clear that the Commission crafted an exemption for certain users. The identified uses include those in newspapers, magazines, and books, most of which are sold by commercial firms. If the Commission had wanted to expand the use restriction beyond soliciting, it would not have added the section 104.15 language. If that is the Commission's intent it would be illogical or even absurd: certain commercial firms may use the data, but they cannot use it for commercial purposes.

#### EVEN IF 11 CFR 104.15 PROHIBITS COMMERCIAL USE OF DATA IT EXEMPTS A CLASS OF USERS THAT INCLUDES TRKC

Commission regulation Section 104.15 states, "The use of information.... in newspapers, magazines, books or other similar communications is permissible..." TRKC communications fall in the category of 'other similar communications.'

The Commission letter of June 11, 2002, indicates its knowledge that TRKC is an Internet publisher of information to the public and that its principal purpose is to facilitate the general public access to information from government and non-government sources on issues of vital relevance to the people. As explained above, TRKC also seeks to encourage and assist the

dissemination of government information and documents. These purposes are similar to newspapers, magazines, and books.

In the Political Contributions Data case (cited below), the Second Circuit noted “[s]ince the FECA’s broad disclosure provisions indicate an unmistakable preference for First Amendment values of publicity and exposure, we conclude that by the term ‘similar’ communication Congress intended one that furthers the ‘profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open.’”

For reference, TRKC has attached numerous news articles and stories about our efforts at general public access to our information. See Exhibit B.

Even the courts have expressed concern about the Federal Election Commission barring the use of this information. In *National Republican Congressional Committee et. al. v Legi-Tech Corporation*, 795 F.2d 190 (DC Cir.1986), in his concurring opinion, Judge J. Skelly Wright warned: “The FEC should remain cognizant of the important and troubling First Amendment implications raised by any construction of the statute that bars the use of information at issue in this case by organizations such as Legi-Tech.”

The development of the Internet also raises issues about the definition of “similar communications.” The Center for Democracy and Technology issued a report in September 1999, entitled, “Square Pegs and Round Holes: Applying the Campaign Finance Law to the Internet – Risks to Free Expression and Democratic Values.” This report has several sections relating to the “media exemption” for political speech, that highlight the changing definitions caused by the development and use of the Internet. It helps explain why TRKC considers itself to be making “similar communications.” For reference, it is attached as Exhibit C.

COURTS HAVE STATED THAT IN CERTAIN INSTANCES THERE IS LITTLE RISK, IF ANY, OF SOLICITATION OR HARASSMENT OF CONTRIBUTORS

Commission Advisory Opinion 1995-9 (NewtWatch) stated, “In *Federal Election Commission v Political Contributions Data, Inc.*, 943 F.2d 190 (2d Cir. 1991)(“FEC v PCD”), the Second Circuit concluded that where a similar list lacked mailing addresses and phone numbers, and contained a caveat against solicitation and commercial use, there is little risk, if any, of solicitation or harassment of contributors. The court stated that it was “virtually certain that these reports will be used for informative purposes (similar to newspapers, magazines, and books...).”

The U.S. Court of Appeals in *FEC v. PCD* rejected the Commission’s conclusion in AO 1986-25 as an unreasonable interpretation of section 438(a)(4) and 11 CFR 104.15(c). The court instead found that PCD’s sale of contributor lists was permissible under those provisions.

The Commission summarized key parts of the court’s opinion in the 17<sup>th</sup> edition of its publication titled *Selected Court Case Abstracts*:

“Under section 104.15(c), the use of information copied from Federal Election Commission reports ‘in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communication is not to communicate any contributor information for the purpose of soliciting contributions or for *other commercial purposes*.’ [Emphasis added]

“The court found that PCD’s contributor lists qualified as ‘other similar communications’ and that PCD’s sale of FEC information did not violate the commercial purpose prohibition: ‘The absence from PCD’s reports of mailing addresses and phone numbers, as well as the caveat on each page against solicitation and commercial use, make it virtually certain these reports will be used for informative purposes (similar to newspapers, magazines, and books...), not for commercial purposes (similar to soliciting contributions or selling cars).’

“The court based this conclusion on its interpretation of the commercial purposes prohibition: ‘The § 438(a)(4) prohibition is only violated by a use of FEC data which could subject the ‘public-spirited’ citizens who contribute to political campaigns to ‘all kinds of solicitation,’ such as commercial solicitations for magazine subscriptions or credit cards. The court said that this reading of the prohibition balances the need to protect the privacy of individual contributors with statutory intent to promote public disclosure of campaign finance information.”

It should also be noted that the appeals court found that the Commission’s position on the “sale and use” restriction was not “substantially justified.” It further held that the 1991 appeals court ruling, which held the Commission’s interpretation to be “unreasonable,” precluded the current panel from finding the agency’s position “substantially justified” under the EAJA. The United States Supreme Court denied the Commission’s petition to review the appellate court judgment. The Commission was also required to pay PCD’s attorneys, \$54,610.

IN LIGHT OF THE PURPOSES OF FECA AND LEGISLATIVE HISTORY TRKC DOES NOT VIOLATE SECTION 438(A)(4)

The underlying purpose of the FECA is to promote full disclosure of information relating to political campaign contributions, not to prevent it. The Act requires the Federal Election Commission “within 48 hours after the time of the receipt by the Commission of reports and statements filed with it, make them available for public inspection and copying.” The United States Supreme Court has confirmed that the Act’s disclosure requirements serve compelling government interests, providing the public with information as to the sources of and use of political campaign money; deterring corruption by exposing large contributions; and providing an essential means of gathering the data necessary to detect violations of the contribution limitations. Thus, the Federal Election Commission, by this action, is attempting to punish TRKC for facilitating the disclosure of such information, contrary to the very purpose of the Act.



The complete legislative history of the Act was set forth by the Second Circuit in the Political Contributions Data case. Senator Bellmon proposed the amendment that became the solicitation restriction.

Mr. President, the purpose of this amendment is to protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party. We all know how much of a business the matter of selling lists and list brokering has become. These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do. 117 Cong. Rec. 30,057 (daily ed. Aug 5, 1971)(statement of Sen. Bellmon).

Senator Bellmon's amendment was grudgingly accepted by the bill's sponsor, Senator Cannon, who replied:

Mr. President, this is certainly a laudable objective. I do not know how we are going to prevent it from being done. I think as long as we are going to make the lists available, some people are going to use them to make solicitations. But as far as it can be made effective, I am willing to accept the amendment, and I yield the remainder of my time. Id. (statement of Sen. Cannon).

Senator Bellmon went on to give an example of the evils he was attempting to combat with his amendment.

MR. BELLMON. \*\*\*

In the State of Oklahoma, our own tax division sells the names of new car buyers to list brokers, for example, and I am sure similar practices are widespread elsewhere. This amendment is intended to protect, at least to some degree, the men and women who make contributions to candidates or political parties from being victimized by that practice.

MR. NELSON. Do I understand that the only purpose is to prohibit the lists from being used for commercial purposes?

MR. NELSON. The list is a public document, however.

MR. BELLMON. That is correct.

MR. NELSON. And newspapers may, if they wish, run lists of contributors and amounts.

MR. BELLMON. That is right; but the list brokers, under this amendment,

would be prohibited from selling the list or using it for commercial solicitation. Id at 30,058.

TRKC encourages the Commission to follow the clear legislative history that emphasizes the prohibition on the use of contributor information in mailing or broker lists. TRKC encourages the Commission to adopt the same principle of statutory construction requiring courts to construe federal statutes, when consistent with the intent of Congress, to avoid serious constitutional problems.

## COMMENTS ON TRKC ACTIONS

### TRKC SEEKS TO PROMOTE THE GOALS OF THE FECA

The Articles of Incorporation of TRKC state, "The purposes for which the corporation is organized are (1) To provide information and information management services to media organizations, foundations, government bodies, and private organizations; (2) To facilitate the general public access to information from government and non-government sources on issues of vital relevance to the people; (3) To inform and educate the public about critical issues of accountability, governance, and representation; and (4) To encourage and assist the dissemination of government information and documents.

TRKC believes our Internet-based company has provided a vast amount of information to a countrywide citizenry, as well as a worldwide audience. The kind of political information TRKC makes available has been deemed a valuable need in our democracy.

TRKC finds it somewhat irregular that the Commission would use its limited resources to restrict the voice of such a small operation as TRKC, when it is primarily attempting to further the same goals as the Commission.

Voters and an active citizenry are vital to a strong democracy and there is a continuing need for information to meet the thirst of an inquisitive and knowledge seeking public. Individuals, organizations, news media and similar companies (such as TRKC) that have the means to communicate with the public are key players in this effort.

### TRKC DOES NOT PROVIDE MAILING LISTS

TRKC does not compile or provide mailing lists to anyone. TRKC does not sell mailing lists to anyone. TRKC believes mailing lists would be the prime target of those wishing to use the names and addresses of contributors for use in soliciting contributions. TRKC does not add street addresses or phone numbers to any data from any source, including the FEC.

TRKC does not make available street addresses in the FEC contributor databases covering 1977-1980. TRKC does not even make available in a downloadable form street addresses of contributors listed in reports from electronic filers with the Commission, and made

available by the Commission via its website. Street address information is helpful in understanding the full identify of contributors but it is only in a limited number of situations that researchers need to document the actual street address and this can be done in image format. Image format is harder to convert into mailing lists.

The principal purpose of TRKC is not to provide contributor mailing lists or brokers lists. As stated above, our primary purpose is providing money-in-politics information to the public.

TRKC believes the primary purpose test is critical. In the Political Contributions Data case, the Commission argued that the purpose was irrelevant, but the Second Circuit disagreed and stated that "purpose" permeated the text of the statute.

"Under the FEC's interpretation of the "principal purpose" requirement, no newspaper could print, for example, a list of contributions made by top executives of a military contractor who had just received a large government contract (information that would surely be protected by the statute if not by the First Amendment). Nor could that newspaper print a list of the larger donors in the congressional district that its circulation serves. In short, such a reading would plainly be contrary to the broader purposes of the FECA, and would very likely run afoul of the First Amendment."

#### TRKC DOES NOT PROVIDE BULK DATA

TRKC does not provide bulk contributor data to anyone. It does not sell bulk contributor data to anyone. TRKC believes bulk contributor data would be the method of choice for someone to obtain the names and addresses of enough contributors to make it worthwhile to solicit contributions.

Even searches of TRKC data are specifically limited to one search at a time. A viewer may search only one candidate at a time, one donor name at a time, one zip code look up at a time, one employer/occupation look up at a time.

TRKC also limits most searches to one two-year election cycle at a time. TRKC believes this may slow down legitimate academic researchers, but for those with large-scale data needs TRKC states they should go to the FEC. For example, TRKC states, "The Disclosure Database Download can be used for only one candidate's two-year cycle at a time. We feel this will be the easiest for the great majority of true researchers who are focused on an election. We realize this will require several steps for someone who wants data from several cycles. For those interested in many candidates, we suggest you get data directly from the FEC ([www.fec.gov](http://www.fec.gov))."

TRKC does not make available bulk contributor data (including all its contributor records) via its FTP site. TRKC does not make available its entire databases in computer tape form.

### TRKC HIGHLIGHTS THE RESTRICTION CLAUSE

TRKC tries to make sure that every person subscribing to our services must read the Terms and Conditions that includes a statement that FEC data may not be used for soliciting contributions. They must make a positive check mark to indicate they agree to the Terms and Conditions. See Exhibit D. If a person has not checked that box, they are blocked by the computer from advancing to the next screen to complete the subscription process. Therefore, every subscriber to TRKC services has agreed to the Terms and Conditions that include the restriction notice. See Exhibit E.

TRKC also places a similar block and restriction notice on our download services. These downloads may not be started without the requester agreeing to the Terms and Conditions that include the restriction notice. See Exhibit F. In addition, TRKC has limited the download capability to one download at a time so that it would discourage attempts at obtaining bulk data. On the same page TRKC states that this same information is available from the FEC via the FEC FTP web site. This data is the same data available from the FEC's FTP site and Direct Access Program system. Our download fee represents our cost for maintaining this data on our servers, connectivity costs and programming costs for improving the format of the data for end users for PC interface.

TRKC also has placed a restriction notice on each of the pages of our public web site that provides access to individual donor name searches, zip code searches, and employer/occupation searches. See Exhibit G.

TRKC also blocks the street addresses from appearing in any download of Commission electronic filing data. See Exhibit H.

### TRKC IS A 'SIMILAR COMMUNICATION' EXEMPT FROM THE RESTRICTION CLAUSE

TRKC is an Internet publisher of political information. Our "PoliticalMoneyLine" trademark is registered with the Office of Patents and Trademarks in "International Class 042: Computer services, namely providing databases featuring general and local news and information of interest to specific geographic areas."

TRKC's PoliticalMoneyLine is a publication of general circulation, reaching an estimated 25,000 viewers in a non-election year. This number increases in a Congressional election years and even more in a Presidential election years. It is a weekly publication containing news of current events and happenings, especially those that are unusual or notable, and new information about anything previously unknown. It is a collection of articles, pictures and other features. News organizations often pick up and run stories or articles based on our original news content. See Exhibit I.

The majority of our users and subscribers are mainstream media organizations, such as the New York Times, the Associated Press, Baltimore Sun, Bloomberg LLC, Bureau of National

Affairs, Charlotte Observer, Dow Jones & Company, ABC News, NBC, C-SPAN, National Public Radio, New York Daily News, Cox Newspapers, Detroit Free Press, Fox News, Gannett Newspapers, Lee Newspapers, Miami Herald, National Journal, Newark Star-Ledger, Newsweek, Roll Call newspaper, St. Petersburg Times, US News & World Report, USA Today, and the Washington Post, among others.

TRKC provides news to these organizations and in some cases services they request such as manipulating data, ranking statistical figures, and other research. In certain situations TRKC may be agents of theirs and in other situations TRKC may be one of their vendors supplying services.

TRKC provides these vital services to the media because most of these news organizations have found it too costly or too time consuming to do this research or data work by themselves. TRKC provides not only the campaign finance expertise but also the computer technology expertise and knowledge of the uniqueness of the Federal Election Commission data structures and formats. TRKC believes that in the early 1990's the Federal Election Commission fell behind in its use of technology and numerous media organizations sought to try and handle this campaign finance data collection and analysis themselves. What they found were archaic file structures and data formats that were hard to download, hard to clean up, hard to manipulate, and that required a patchwork of software to handle data exceptions and rules. They quickly gave up on their efforts.

TRKC sought to help meet their needs and provide a cost efficient and cost sharing model of operation. This consortium-like entity could arrange, store and query data with a central set of software and programs that no one user could afford on their own. TRKC also handled the updating of political information from a wide variety of offices, agencies and sources around the Washington, D.C. area.

As an Internet publisher of political information TRKC also provides information in a nonpartisan way and without spin or selective data sets. Our users include all six of the national political party committees, as well as major corporations and labor unions, such as the AFL-CIO, AFSCME, American Medical Assn, Associated Builder & Contractors, Arent Fox, AT&T, Balch & Bingham, Becton Dickinson, BP Amoco, Butera and Andrews, Blue Cross, Boeing, Cassidy & Associates, ChevronTexaco, Coca-Cola, Ernst & Young, ExxonMobil, Fidelity, Freddie Mac, Greenberg Traurig, Hogan & Hartson, Instinet, Int'l Assn of Machinists, Lockheed Martin, Manatt Phelps, Merck, Microsoft, National Assn of Federal Employees, New York Life, Oracle, PepsiCo, Preston Gates, SBC, Schering Plough, Shaw Pittman, Sheet Metal Workers, Textron, United States Senate, Wiley Rein & Fielding, and Williams & Jensen. These organizations receive our development services, or news, or the opportunity to utilize our software and query services on political information.

TRKC provides a full set of data so that all sides of an issue may view whatever data they desire for whatever argument or presentation they want to make. TRKC also spends a great effort to permit a viewer to "drill down" beneath general summary figures to view the underlying detailed documentation.

TRKC also provides a vast amount of political information to the general public at no cost. This Internet-based flow of information has provide a wealth of political data to participants in the political arena, including students, voters, candidates, political parties, organizations, unions, corporations, interest groups, lobbyists, and other news organizations.

TRKC is not owned or controlled by any political party, political committee, or candidate. TRKC does not endorse, support, or oppose political candidates or political parties. TRKC does not engage in lobbying, publicity, promotion work for any individual, political party, corporation, organization, or agency of the Federal Government.

## COMMENTS ON FEC MOTIVATIONS

TRKC is somewhat concerned that the June 3, 2002, action may have been influenced by other interactions between TRKC and the Commission.

In the past, TRKC has been critical of many actions or inaction of the Commission. TRKC has also assisted organizations, such as the Project on Government Oversight (POGO), that have issued critical reports of the Commission. The criticisms made by POGO are now the subject of an Inspector General investigation and Congressional hearings. See Exhibit J.

TRKC also has made a Freedom Of Information Act request to the Commission for information relating to the FEC's electronic filing software. This request is still pending.

TRKC wants to assume that the Commission's June 3, 2002, action was not influenced by these collateral developments.

TRKC also assumes that the initiation and processing of the Commission's June 3, 2002, action were in full accordance with Commission Directive 6, "Handling of Internally Generated Matters." Earlier this year questions were raised about whether Directive 6 procedures were being followed, specifically in regards to MUR 4994. If Commission Directives were not followed in the subject MUR 5155, then TRKC urges dismissal and expunging of the June 3, 2002 action.

TRKC assumes that the Commission's action was not initiated under Directive 6, Section A "Referrals From Operating Divisions of the Commission," since TRKC is not a required filer, nor has it been contacted by the Audit Division, the Reports Analysis Division, or the Public Disclosure Division, nor has TRKC been involved in any remedial steps by a division.

TRKC also assumes that the Commission's action was not initiated under Directive 6, Section B, "Referrals From Other Agencies, Public Government," since TRKC is not involved with any agencies other than the U.S. Senate to whom TRKC provides technical support on electronic filing and imaging systems.

TRKC further assumes that the Commission's action was not initiated under Directive 6, Section C, "Commission-Authorized Non-Routine Reviews of Reports and Other Documents," since TRKC is not a candidate or other reporting entity.

TRKC therefore assumes that the Commission's action was based on Directive 6, Section D, "News Articles and Similar Published Sources." If that is the case TRKC questions whether or not the initiation under this section is justified. TRKC believes this section is relevant "only on a news article or other report that itself alleges a violation, or sets out facts that on their face would constitute a violation, and which comes to the attention of the Commission staff from some external source." As this response explains, the facts as to the business operations of TRKC cannot on any credible basis, and "on their face," be said to constitute a violation of the Act.


### TRKC INC WILLINGNESS TO ADDRESS ANY CONCERNS

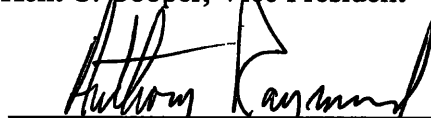
TRKC hopes that it has provided sufficient information to better familiarize persons with our operations. TRKC is willing to address any specific concerns you feel TRKC has not answered. However, TRKC hopes that any questions or requests are focused on specific issues or activities.

Respectfully submitted,

TRKC Inc.

By:

  
Kent C. Cooper, Vice President

  
Anthony D. Raymond, Vice President

I declare under penalty of law, including 18 USC 1001, that the foregoing statements are true and correct according to the best of my knowledge, information and belief.

By:

  
Kent C. Cooper, Vice President

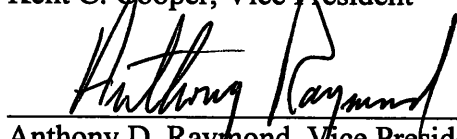
  
Anthony D. Raymond, Vice President

EXHIBIT A – PoliticalMoneyLine News

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PoliticalMoneyLine™

The home of

FECInfo

and tray.com

Search  
Databases

ONLINE

Home

## Candidates

US House Sen and  
Pres Campaigns

Presidential Races

Politician PACs  
527sDefense Funds  
FoundationsCandidate \$  
Leaders

## Donors

Donor Name  
Lookup

Donor ZIP Lookup

Employer /  
Occupation  
LookupOut of State  
Donors

## PACs &amp; Parties

PAC / Party  
Profiles

Industry Total \$

PAC \$ Leaders

New Corp PACs

Labor Union \$

Illegal Corp \$

## 527 Filers

527 Database

## Foreign Agents

FARA Database

Help

Subscribers  
OnlyPAC \$ to  
Congressional  
Comm

107th Congress

106th Congress

Soft Money

2001-2002

1999-2000

SOFT MONEY  
HARD LAW

★★★★ NOW AVAILABLE! ★★★★★

First book on the new campaign finance law

CLICK HERE TO ORDER YOUR COPY

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Home Page Archive: Wednesday, Apr 10 2002

UPDATE: Wed Apr 10, 2002

[Sign Up For Email Notification Of Updates](#)

## Siebel Systems

## Cyber PAC

Siebel Systems' 2001 year end report discloses it has raised over **\$2 million from only 373 donations**. The reports shows 362 employee donors, from locations around the country, giving exactly \$5,000 from their personal funds.

This is more maximum contributions from employees than any other federal corporate PAC in the history of the FECA.

View a [San Jose Mercury](#) story on Siebel's PAC.

Below is a list of the highest number of \$5,000 contributions received by corporate PACs in 1999-2000:

Microsoft	224
Enterprise Rent-A-Car	52
America Online	37
Koch Industries	34
Amer Int'l Group	28
Knight Trading	28
First Health Group	28
Sallie Mae	28

## New Lobby Reports

25 Organizations have reported spending over \$3 million during the last six months of 2001. Subscribers to FECInfoPro may click on Year End 2001 Lobby Reports and [see the rolling figures](#). More reports are being tabulated each day.

## Lobbying

Clark & Weinstock register to lobby for **PricewaterhouseCoopers** on accounting and auditing issues and all proposals involving the financial reporting process, corporate



(Terry McAuliffe)

If you see this man, watch your wallet.

**Terry McAuliffe** indicated in an interview with **NPR** that he had raised about \$25 million for the **DNC** building from about a dozen donors. **Haim Saban** said he gave \$7 million. Our guess is that these and other donors are the same unnamed mega-donors that gave to the **Clinton Library Fund**. If you know of others, don't hesitate to email us at [info@trkcinc.com](mailto:info@trkcinc.com)

House Voted This Week  
on 527s

The **House** voted Wednesday (219-205) defeating *technical* amendments to the 527 disclosure legislation passed in 2000. The **Ways and Means Cmte** voted out amendments that would have exempted 527s of Members of Congress from disclosure at the national level.

## 527 Filings

Donations into Sec 527 committees are not limited as **Alida (Rockefeller) Messinger** proved when she gave \$625,000 to the **League of Conservation Voters** federal PAC in 2000.

See her 527 donations via our **FECInfoPro Sec 527 database**.

## Nixon Money Men are

1997-98

1995-96

1993-94

## Lobby Databases

Lobby \$\$

Summary (98-01)

Year End 2001

Mid Year 2001

Year End 2000

Mid Year 2000

Year End 1999

Mid Year 1999

Year End 1998

## Lobby Registrations

Updated Regularly

Text Search

## Leadership PACs

2002 Rankings

2000 Rankings

2002 Top Cmte Donors

2000 Top Cmte Donors

## Subscriber's Login

Change my Password



## OnLine Services

PACtracker

Subscriber Enhanced Employer Research

Learn about

FECInfoPro

PACtracker

eAlert

Subscriber Enhanced Employer Research

Electronic Filing Data Download Disclosure Data Download

FECInfo

Enterprise

TRKC Consulting

governance and participants in the US capital markets. See [April 4 filings](#).

**Ann Eppard** registers to lobby for **Greater Johnston Regional Partnership** on Transportation Appropriations. See [April 4 filings](#).

**Paul Hastings Janofsky & Walker** registered to lobby on Bipartisan Campaign Reform Act, FCC ownership rules, FCC digital television rules, and other matters. See [April 5 filings](#).

**Akin Gump Strauss Hauer & Feld** registers to lobby for **Muskogee (Creek) National Gaming Operations & Authority Board** on gaming issues. See [April 5 filings](#).

**Colex & Assoc** registers to lobby for **Seminole Tribe of Florida**. See [April 5 filings](#).



Disbursement Data Now On-Line

## House Candidates' and PACs' Disbursement Data Available As Reports Are Filed

### What Is It?

eAlert is a daily email to you about any committee (House candidate, PAC, or Party) that filed electronically with the FEC by 3:00 PM EST each day. Links inside the email get you directly to the report(s) -- **NOW INCLUDING DISBURSEMENTS!**

### Do I See All Filings?

If you'd like, but you can just zero-in on the types of Committees YOU choose. You can pick Transportation filers and/or Communication filers or Candidate filings from one or 50 states.

You decide what you want.

**I need more information.**

Sure. Just [click here](#).

## still in the News

Former **Richard M Nixon** confidante **Robert H Abplanalp** of Bronxville, NY, (CEO of **W. E. Griffen**), donates \$5,000 on 1/4 to the **RNC**. Abplanalp is one of the three persons specified in **Bebe Rebozo's** will who must determine how his bequest of funds may be spent.

## New Leadership PACs Register Last Week.

Rep **Phil English** starts **Prosperity Helps Inspire Liberty PAC**. Rep **Ernie Fletcher** starts **WELPAC**. Rep **Anders Crenshaw** starts **Leadership For Tomorrow PAC**. We're still not sure about **Moving America Forward**.

## Presidential Profiles

Bush and Clinton profiles include the obvious and not too obvious money surrounding incumbents



Bush



Clinton

**Reporters Tips:** -- **Next Reports Due**  
 -- **CRS Reports**  
 -- **Political Ad \$**  
 -- **State Records Offices**  
 -- **Soft Money Life**

**About Us:** "Meet the new boss, same as the old boss..." --*The Who X*

**What We Do:** Web Consulting; Data collection, leasing, analysis.X

### Privacy Statement

© 2002 TRKCINC  
 Owned and Operated By  
 Kent Cooper and Tony Raymond

TRKC Additional Response to June 11, 2002 letter from FEC Chairman David M. Mason

EXHIBIT B – News Articles About TRKC Goals

26044143636

# Government Data At Your Fingertips

## On-Line Help in, Say, Tracking Who Contributed How Much to Whom

By MICHAEL TAUB

WASHINGTON, Feb. 16 — Sifting through raw government data has always been intimidating, but that did not intimidate Tony Raymond. In fact, it inspired him.

"My challenge comes from making it fast, technically, for people to get useful government information," said Mr. Raymond, a former World Wide Web page manager at the Federal Election Commission.

Mission accomplished. On an Internet site that highlights money and politics, Mr. Raymond, 41, makes tracking political contributions simple. Want to see who in your hometown donated more than \$200 to a particular political candidate or party? Type in your ZIP code and Mr. Raymond's site — FECInfo — provides a list. Care to know which political candidates received contributions from Charles Trie, the Arkansas businessman whose funding tactics for President Clinton's legal defense fund were recently criticized? Just remember how to spell his name and you are sure to find out. Want to know what actors gave? You can search the site by profession.

Mr. Raymond is not alone in recognizing a public demand for simplified government data. Numerous organizations both in and out of Washington, have benefited from the ability to glean the essentials from the oceans of data the Federal Government generates daily. For decades, organizations — both profit and nonprofit — have made it their business to retrieve, reorganize, analyze and disseminate practical government information.

So what Mr. Raymond and a new generation of Washington-based designers of Web sites are doing is a new twist on an old business. Nonetheless, they are finding that the technology is transforming the process.

"The Internet is a wonderful way to transmit complicated government information," said David Burnham, co-director of Transactional Records Access Clearinghouse, or Trac, a research group that evaluates Federal law enforcement strategies and statistics. "I think companies not on the Internet will soon be at a real disadvantage."

One organization that has drawn a similar conclusion is Common Cause, a public interest group in Washington that studies how money influences Federal legislation. Long a repackager of government data, Common Cause began using the Internet only recently, offering visitors to its Web site search options similar to Mr. Raymond's.

"Our site makes it easy to see how money given by telecommunications companies influences telecommunications legislation on Capitol Hill," said Ann McBride, president of Common Cause. "And telecommunications is only one example."

Like Mr. Raymond and Mr. Burnham, Common Cause offers its data free. Disclosure Inc., another company disseminating government data on the Internet, expects users to pay a fee — as they do for its paper- and microfilm-based research.

Since March of last year, Disclosure has made available the documents that publicly held companies must file with the Securities and Exchange Commission. Disclosure offers Internet users search engines that "cut right to the part of a document a user wants to see," said Cheryl Gustitus, Disclosure's director of marketing.

Disclosure's streamlined service, an easily accessible version of the S.E.C.'s Edgar Web site, costs \$4.95 a month to use. Global Access is a more extensive site with far larger data bases and far more nimble search functions that can be cross-referenced with other data that Disclosure gathers. Users of this site are billed on a sliding scale, depending on their use, but the initial password costs \$1,000.

The Federal Election Commission, for which Mr. Raymond once worked, charges \$20 an hour for one of its Web sites, and its free site omits the valuable search options users now favor. But Bob Biersack, who now runs the F.E.C. Web page that Mr. Raymond helped design last year, said the commission hoped to offer such search options on its free site by the 1998 Congressional elections.

Mr. Biersack thinks the fee-based site will then be phased out.

"Tony's Web site is easier to use than ours," Mr. Biersack said. "It's of high quality, and we often refer people to it."

But Mr. Raymond's site needs little publicity. Already journalists are using it as fodder for articles, and academics across the country as a grist for seminars. At the University of Michigan, for example, Grace York, a political science librarian, incorporates the site into a course she teaches on legislative research. "Raymond's site is extremely interactive, and students find it fun," Ms. York explained. "But the F.E.C. just puts the data out there and says 'good luck.'"

Yet the data Mr. Raymond uses comes directly from the F.E.C. When the commission updates its Web page once a month, Mr. Raymond does the same, repackaging it along the way. This month, for instance, Mr. Raymond set up a top 100 list that tells which political candidates had the most cash available to them as of Nov. 25, 1996 (Charles Schumer, a Democrat from New York, was the richest with \$4.9 million). For the F.E.C., that is not really an option.

"Tony's site puts the hot stuff right out in front," said Kent Cooper, a former colleague of Mr. Raymond's at the F.E.C. who is now executive director at the Center for Responsive Politics, an organization based in Washington that studies money and politics. "Can the F.E.C. do that, emphasize one candidate, party or PAC? I don't think so. Its page has to

With the Internet, it is easier to follow the money trail from lobbyists to Capitol Hill.

seem neutral. Most Federal Web sites do."

The result is Government Web sites that tend to be dry and laborious, often steeped in data but lacking a useful way to digest it. Tom Lufkin, Internet manager for the Treasury Department, acknowledged as much, saying, "Organizations like Treasury are reluctant to present information in a simplified and colorful manner."

But Mr. Lufkin, who cautioned that he was speaking for himself and not for the Treasury Department, said the department was slowly trying to overcome that. In particular, he pointed to an Internal Revenue Service site decorated with graphics designed to be both "playful" and practical.

Mr. Raymond has no problem being playful. Speaking of his work, he said with a chuckle, "It's a hobby, that's all."

Now it's a hobby that pays. Although Mr. Raymond spent \$6,000 of his own money to get FECInfo online, he is now working as a consultant at the Center for Responsive Politics. His task: create a sister site to FECInfo.

## Presidential Tax Returns

Copies of income tax returns filed by six Presidents become available on the Internet today from Tax Analysts, a nonprofit publisher, as part of its tax history project (<http://www.taxhistory.org/presidential/>). The available returns were filed by Bill Clinton, George Bush, Ronald Reagan, Jimmy Carter, Richard M. Nixon and Franklin D. Roosevelt.

Included with the returns is a 1937 letter from President Roosevelt to Guy T. Helvering, the Commissioner of what was then the Bureau of Internal Revenue asking for help calculating the tax on his \$82,392.57 income (the equivalent of \$895,000 today). "As this is a problem of higher mathematics may I ask that the Bureau let me know the balance due," Mr. Roosevelt wrote in a letter accompanying his \$15,000 check.

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# Circuits

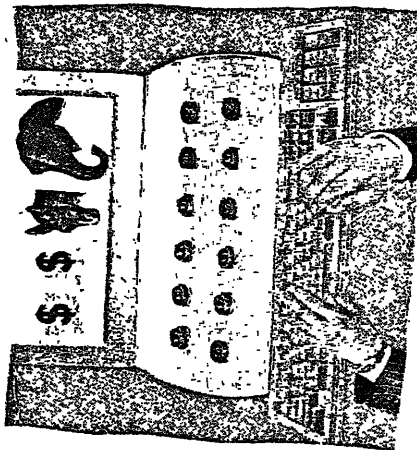
NE E1

THURSDAY, AUGUST 26, 1999

The New York Times

## Following the Money, Through the Web

Who's Giving to Whom? Once Elusive, Political Donations Are Now Easy to Track



Ellen Weinstern

the Gore campaign \$1,000, Rob Reiner kicked in \$2,000, Jack Nicholson gave \$250 and Hugh Hefner \$1,000.

Barbra Streisand, one of 90210's biggest givers in 1998, with more than \$38,000 in donations, has also given Al Gore \$1,000 this year, though she has since switched her address to Santa Monica (90401). Warren Beatty, a 90210 resident who says some people are urging him to run for President himself, has given nothing to anyone — perhaps deciding to save his money for his own bid.

Where does this information come from? The Web, of course, where technology is shedding new light on political contributions. Once hidden in dusty archives and often kept in hard-to-find spots that politi-

cians did not make any easier to locate, campaign finance records on the state and national levels are now available on a growing number of user-friendly Web sites.

And, of course, it is not just the rich and famous whose donations can be tracked but everyone's — even yours and your next-door neighbor's. All campaign donations are considered public information, and the records are readily available for public view.

This technological development is adding a new dimension to political discourse. Where political races once focused primarily on personalities, partisanship and issues, an awareness of — and concern over — the role of money in politics has grown. In large

Continued on Page 9

# Who's Giving to Whose Campaign?

Continued From Page 1, This Section

part, technology is driving and accelerating the debate by providing more and more information.

Hardly anyone knew who gave money to Franklin D. Roosevelt or Dwight D. Eisenhower or Harry S. Truman. But that ignorance — which was sometimes the result of political calculation — has been replaced by a new transparency.

The Internet is making it easy for journalists, competing candidates and ordinary citizens to connect the dots between politicians and their sources of money. And that has come about despite efforts by many in Congress to keep the activities of the Federal Election Commission, the Government agency that collects much of this data, to a bare minimum.

"Now people can sit at their terminal and pull up all this information," said Charles Lewis, executive director of the Center for Public Integrity, a Washington policy research group. "For the Presidential race, you don't have to leave your work station, and this means the barriers to getting this information have been substantially removed. This is an extraordinary development. Anyone, anywhere in America, can click onto one of these Web sites and see who is behind their lawmaker. And they couldn't five years ago."

"I don't want to sound pie-in-the-sky," continued Mr. Lewis, whose group has state-level campaign finance information on its Web site, [www.publicintegrity.org](http://www.publicintegrity.org). "But this brings democracy and accountability much closer to the average citizen. Frankly, it's wonderful."

To some, however, it is not so wonderful. As the availability of financial records has grown, so have attempts to evade disclosure. In the last few years, independent advocacy groups have cropped up to to sponsor televised political attack ads that are not connected with any candidate or party. These groups enjoy legal protections that allow them to stay out of Government records and spread their money in secrecy.

"One of the unintended effects of this new visibility is a growth in some of these subterranean activities," said Kenneth Gross, a Washington lawyer who specializes in election law.

Right now, there are around a half-dozen campaign finance Web sites, each offering slightly different information or different ways to connect candidates and dollars.

Some sites focus on the relationship between campaign donations and votes on Capitol Hill. Others provide information on every shred of campaign finance data filed with the Government, including copies of the often-obscure filings. Still others focus on candidates at the state level.

Ground zero for all this information is the Federal Election Commission. Each Federal candidate and party must provide filings with the commission on how much

money is raised, who donated it and how the money is spent.

For decades, the information was stored on paper in one spot in Washington or on computers that required a trip to the commission's offices to use. But in the 1996 elections, the commission began putting much of the information on line, though the site was not easy to use then.

Campaign finance rules adopted after Watergate limit individual contributions to \$25,000 a year. They permit individuals to give no more than \$20,000 to a national party, \$5,000 to a political action committee and \$2,000 to a candidate — up to \$1,000 for the primary and \$1,000 for the general election. Corporations and unions are prohibited

**Campaign information is easier than ever to get, but there is still secrecy.**

from donating to Federal candidates.

Those restricted contributions are often called hard money. By contrast, soft money is the name often given to what individuals, unions and corporations can give in unlimited amounts to national party committees for "party-building" activities. While ostensibly earmarked for generic activities like voter-education programs, soft money has become a way for big donations to go almost directly to candidates.

Whether hard or soft, all donations must be reported to the elections commission.

At [www.fec.gov](http://www.fec.gov), everything anyone could possibly want to know about Federal election rules and donations is available. And, borrowing some of the user-friendly techniques of campaign finance Web sites run by public policy groups, the commission has made its site much easier to navigate. It is now easy for anyone to punch in a person's name under the View Contributions category on the home page (try William Gates, for instance) and see their donations.

The site lets a person view the actual documents filed by the candidates (for instance, the page listing Mr. Gates's \$3,000 donation to the Republican Majority Fund, a political action committee, in which Mr. Gates describes his occupation as "C.E.O.") And, unlike on other Web sites, all spending data and every document filed by candidates and political committees with the Government can be seen.

"We always thought of ourselves as being responsible for providing the basic raw material at this Web site," said Robert Biersack, the site's Webmaster. "We also want to provide a very close, visible connection to the original source document. The connection between computer data and the original document is very important to us."

"What's also new is the way our data interrelates," Mr. Biersack added. "You can go to a candidate's filings and then find out who else is giving to that candidate or committee in a stream-of-consciousness way."

## Site-Seeing: Campaign Financing

Here are some Web sites that offer information on state campaign financing.

**NATIONAL INSTITUTE ON MONEY IN STATE POLITICS:** [www.followthemoney.org](http://www.followthemoney.org)

**ARIZONA:** [www.sosaz.com/cfs/CampaignFinance.htm](http://www.sosaz.com/cfs/CampaignFinance.htm)

**CONNECTICUT:** [www.state.ct.us/sots/ElectionsDivision/ElectionIndex.htm](http://www.state.ct.us/sots/ElectionsDivision/ElectionIndex.htm)

**FLORIDA:** [election.dos.state.fl.us/campfin/cflndb.htm](http://election.dos.state.fl.us/campfin/cflndb.htm)

**ILLINOIS:** [www.elections.state.il.us/Cds/pages/statuswelcome.asp](http://www.elections.state.il.us/Cds/pages/statuswelcome.asp)

**INDIANA:** [www.state.in.us/seb/html/campaignindex.html](http://www.state.in.us/seb/html/campaignindex.html)

**KANSAS:** [www.lnk.org/public/legislative/finance](http://www.lnk.org/public/legislative/finance)

**LOUISIANA:** [www.ethics.state.la.us](http://www.ethics.state.la.us)

**MICHIGAN:** [www.sos.state.mi.us/cfr/cfoni.html](http://www.sos.state.mi.us/cfr/cfoni.html)

**NEW YORK:** [www.elections.state.ny.us/finance/finance.htm](http://www.elections.state.ny.us/finance/finance.htm)

**NORTH CAROLINA:** [www.sboe.state.nc.us/cro/finance.htm](http://www.sboe.state.nc.us/cro/finance.htm)

**OHIO:** [www2.state.oh.us/sos/search.html](http://www2.state.oh.us/sos/search.html)

**PENNSYLVANIA:** [164.156.7.79/finance/cf\\_data.htm](http://164.156.7.79/finance/cf_data.htm)

**UTAH:** [governor.state.ut.us/lt\\_gover/ctcintro.htm](http://governor.state.ut.us/lt_gover/ctcintro.htm)

**VIRGINIA:** [www.sbe.state.va.us/cfda/default.htm](http://www.sbe.state.va.us/cfda/default.htm)

**WASHINGTON:** [web.pdc.wa.gov](http://web.pdc.wa.gov)



Shana Raab for The New York Times

Tony Raymond and Kent Cooper, of Public Disclosure, in front of the Capitol.

The granddaddy of all independent campaign finance Web sites, and perhaps the most comprehensive, is [www.tray.com](http://www.tray.com), which was set up in 1996 by two former Federal Election Commission employees who formed a Washington research firm called Public Disclosure Inc.

Their site takes often-fragmented commission data and organizes the information into an accessible, logical and simple-to-use format. Whether it's following individual donations, looking at the Clinton legal defense fund, tracking the 2000 Federal candidates or exploring soft money donations, the site is a one-stop shopping center for campaign finance data.

For instance, in the section about the 2000 Presidential race, a search for information about Dan Quayle shows not only donations, but also transfers to his campaign from party committees as well as all his disbursements and the locations of all his contributors. The contributor list can also be sorted by employer and occupation.

The page on Senator Phil Gramm Republican of Texas, shows donations back to 1980 and links to political action committees that have given to Mr. Gramm, the Texas Republican. It also includes money he has given to other candidates and his personal financial statement.

"We're interested in putting this information out without any spin," said Tony Raymond, who founded the site with a former commission official, Kent Cooper, "because we feel the dollars speak for themselves."

Mr. Raymond said the site was averaging around 7,000 to 12,000 visits a day early this summer, a number that he said would "go through the roof" when the 2000 election got into full swing later this year.

At the Web site for the Center for Responsive Politics ([www.opensecrets.org](http://www.opensecrets.org)), the emphasis is on the correlation between contributions and votes in Congress.

The site has easy-to-read reports on different industry groups and which candidates got their contributions. And its candidate profiles are comprehensive, showing

raw data for who gave money as well as data for industry groups, presented with colorful graphs and charts.

The site shows, for instance, that George W. Bush, the Republican Presidential hopeful, is getting more money from every sector of the economy — except labor unions and lawyers — than any other candidate, including Vice President Al Gore. While Mr. Bush has received more than \$1 million from the oil and gas industry, Mr. Gore has received \$56,700; while the health care industry has given Mr. Bush more than \$1 million, Mr. Gore has received \$340,000.

"We are building a sandbox for people to play in," said Larry Makinson, executive director of the Center for Responsive Politics. "We want people to grasp things easily. That's why we use lots of charts. We want people to see what they got from their candidates from all this money spent. After any vote in Congress, we want people to know whether money bought something or failed to buy something."

Has all this disclosure and potential public scrutiny made some donors squeamish? The answer is: sort of.

And one side of politics that often does not show up on campaign finance sites involves issue advocacy groups. In the last Presidential election, such groups poured millions of dollars into television advertisements attacking candidates or praising them — but without expressly advocating a candidate's election or defeat. Because the groups operate independently of the candidates and their ads do not contain the words "vote for" or "vote against," the law does not require that they register with the F.E.C. or list their donors.

"I suspect that all this Internet data is leading to some of the current pressure to move donations off the radar screen," said Trevor Potter, a Washington lawyer and former Federal Election Commissioner. "A lot of people who didn't want their activities disclosed in the first place are more threatened and trying more vigorously to avoid that spotlight."

**Kent Cooper****From:** Kent Cooper [kcooper@trkcinc.com]**Sent:** Tuesday, May 22, 2001 9:01 PM**To:** kcooper@trkcinc.comCopyright 2001 Campaigns & Elections, Inc.  
Campaigns & Elections

May, 2001

**SECTION:** Supplement; BANDWAGON; The Complete Guide to Politics on the Internet; Clicks & Picks; Pg. 48(B-4)**LENGTH:** 1113 words**HEADLINE:** Money and Politics: Researching the Numbers on the Web**BYLINE:** BY MARY CLARE JALONICK**BODY:**

THE INTERNET HAS revolutionized campaign finance reporting, whether reformers and their detractors realize it or not.

Until a few years ago, the only people who had access to federal candidate finance records were those with the time to haul themselves down to the Federal Election Commission in Washington, D.C., to sort through mountains of papers. Similarly, those looking for state or local candidates' finance records usually had to take a trip to their state's capital to find what they were looking for.

Though candidate reports were available on the Internet before the 2000 election cycle, we saw for the first time last year a wide array of candidate information. U.S. Senate reports were finally available online, as were reports in more than half of the 50 states.

Most importantly, this enables reporters to find whom is contributing to campaigns and how campaigns are using their money.

In addition to sites that scan reports and crunch numbers, there are many fine resources on the Web that explain the very technical and complicated rules of state and federal campaign finance.

The best campaign finance sites to surf:

**Federal Info**

When looking for federal campaign finance reports, your first stop should be the Federal Election Commission ([www.fec.gov](http://www.fec.gov)). The FEC Web site is familiar to many by now, but some may still be intimidated by the volume of documents on the site. Though the site is not searchable by expenditure or donor, it's easy to find a candidate. From there, you must search through each individual report, but the commission makes "flipping pages" easier with quick download times.

For those looking to avoid such a process, however, there are two sites that have sorted the data for you. Both are pioneers in the campaign finance world and have ensured that disclosure will not only apply to those with the energy or know-how to sort through federal reports.

*Politicalmoneyline.com*, formerly FEC Info, organizes donor information in every way imaginable, offering lookups by donor name, politician name, donor zip code, donor employment, state, PAC association, party association and so on. The site, which is run by innovators Kent Cooper and Tony Raymond, even has a "527" committee database, searchable by name, zip code, state and donor names.

Subscribers to *politicalmoneyline.com* have access to even more information -- PAC donations to candidates, a soft money database and a lobbying database. The site also offers to subscribers a "PACTracker," which monitors PAC contributions using detailed contribution records and each subscriber's custom-built lists.

The other definitive money-in-politics site is *opensecrets.org*, run by the Center for Responsive Politics in Washington, D.C. The center is focused on campaign finance reform, so the site is more biased than *politicalmoneyline.com*. However, this doesn't take away from the value of the site, which not only tracks donations but includes several feature stories on particular candidates and PACs.

The center's writers work as advocates and journalists, tirelessly analyzing data and releasing weekly feature stories by e-mail. The features are always relevant to current events and shed light on most any political situation or congressional action by showing the money behind the issue. The site also has "issue profiles" that extensively detail the financial background on the most relevant subjects moving through Congress at any given time.

5/23/2001

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Adding to the site's many features is the computer's endless number crunching, neatly organized in "Who's Giving" and "Who's Getting." Politician profiles are colorful and extensive, with assorted graphs detailing fund sources, PAC contributions and the candidate's quality of disclosure.

#### State Info

The National Institute on Money in State Politics ([www.followthemoney.org](http://www.followthemoney.org)) provides information on how much specific businesses, interest groups and contributors have invested in each state. Each state's information is sorted by contributor, candidate, industry and party donations.

Comprehensive sites like this may be your best bet for state candidate filings for now, but state government sites are improving their donor databases every year. At the first of the 2000 election cycle, few states had state donor information available. Now, 32 states have some sort of searchable donor information online, usually on the secretary of state's Web site. Some of the better databases can be found in Illinois ([www.elections.state.il.us](http://www.elections.state.il.us)), Indiana ([www.indianacampaignfinance.com](http://www.indianacampaignfinance.com)), Maryland ([www.elections.state.md.us](http://www.elections.state.md.us)) and Washington state ([web.pdc.wa.gov](http://web.pdc.wa.gov)).

#### Campaign Finance Issues

Those more interested in the issue itself than individual numbers will also find a wealth of sources on the Web. The Hoover Institution on War, Revolution and Peace at Stanford -- "Ideas Defining A Free Society" is their motto -- has an extensive site ([www.campaignfinancesite.org](http://www.campaignfinancesite.org)) on the background of the issue, detailing legal matters, legislative history, supreme court rulings and reform proposals.

The Campaign Finance Information Center ([www.campaignfinance.org](http://www.campaignfinance.org)) is another good resource, run by the University of Missouri's famed journalism school and focusing on reporters who cover the issue. The site has a database of campaign finance articles, along with tips for reporters, networking opportunities and information about top donors and campaign finance laws in all 50 states.

#### Reform Advocates

Campaign finance reform advocates have done a good job online, with a variety of tools that attempt to show the evils of money in politics. Common Cause ([www.commoncause.org](http://www.commoncause.org)) has a "Soft Money Laundromat," which searches soft money contributions to party committees and educates surfers on what the donations "mean for our democracy." The liberal magazine *Mother Jones* ([www.motherjones.com/coinop\\_congress](http://www.motherjones.com/coinop_congress)) features "Coin-Operated Congress," which details interest group donations to legislators.

Other sites lay out a detailed agenda, proposing ways to reform the system. Public Citizen ([www.citizen.org](http://www.citizen.org)), the Campaign Finance Institute ([www.cfinst.org](http://www.cfinst.org)) and John McCain's Straight Talk America PAC Web site ([www.straighttalkamerica.com](http://www.straighttalkamerica.com)) all list solutions to what they see as the problem.

Granny D, a 91-year-old campaign finance reformer who walked across the country for her cause, details her mission and posts visitor feedback at *Grannyd.com*. "Our first priority today, then, is to defeat utterly those forces of greed and corruption that have come between us and our self-governance," she says on the site.

LOAD-DATE: May 16, 2001

EXHIBIT C – News Definition Article

Excerpt from Center For Democracy & Technology, October 5, 1999, First Amendment and Free Expression, “Square Pegs and Round Holes: Applying the Campaign Finance Law to the Internet – Risks to Free Expression and Democratic Values, Part V Impact of the FEC’s Rulings on Campaign-Related Speech and Activities, Section D Nonpartisan Activities, Corporate Contributions, and Media Exemptions – a Conundrum for Web Forums.

“...Another distinction rendered obsolete by the Internet is the distinction between media and non-media. To meet the FEC’s definition for the “media exemption,” one must meet several requirements: the content must be a news story, editorial, or commentary from a qualified press entity using the press entity’s routine means of distribution. The Internet has fostered an explosion of alternative news providers, some of which become absorbed into the mainstream media, while many have only an online presence. The current definition of media assumes the model of traditional mass communicators. Rupert Murdoch and Donald Graham are able to use their media empires to advance particular agendas; Rush Limbaugh and Jim Hightower are permitted to support or criticize political candidates in their daily radio programs. [52] The media exemption from campaign finance regulation has been broadened to include talk shows and other television programming with no news content. Certain political Web sites could be the Internet equivalent of such talk shows but they probably would not meet FEC guidelines. The FEC allowed networks to give free airtime to candidates but rejected an offer of free web space from CompuServe.[53]

“The Supreme Court has said that “liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets... The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.”[54] Justice Thomas has said that “when the framers thought of the press, they did not envision the large corporate newspaper and television establishments of our modern world;” instead they believed in a system of “many independent publishers.” [55] Such a vision is made possible by the ease of publishing in the online world. However, federal election law has not adapted its definition of media to the Internet; when the FEC defines the “media exemption,” it leaves out the millions of individuals and small organizations using the Web to voice political concerns.”

In its conclusion, the report states, in part, “The blanket application to the Internet of campaign finance restrictions designed with other media in mind poses substantial risks to the burgeoning online political expression and activity. In the areas of greatest promise, campaign finance laws are the most restrictive and troubling. The concern is not that the large national parties or organized interests will suffer, but that the smaller organizations and individuals that the Internet promises to empower will instead be silenced, thereby discouraging grassroots efforts of the very type that campaign finance laws were intended to enable and encourage.

“The First Amendment freedom to associate and to speak should be encouraged in the world of the Internet. Opening the political dialogue to grassroots efforts with no official organization is the essence of the Internet’s democratic potential. The FEC has instead started down the path of restriction. By permitting only well-established organizations who strictly adhere to FEC standards the right to be involved in the electoral debate, its decisions would

move us further away from the goal of equalizing political influence. The ensuing decrease in online political discussion will also prevent an improvement in the quality of debate.”

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TRKC Additional Response to June 11, 2002 letter from FEC Chairman David M. Mason

EXHIBIT D – Restrictions on Order Form

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**FECInfoPro Order Form**

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[Back to Demo](#)[Click here](#) to read our General Terms and Conditions.☐ I agree to the General Terms and Conditions.

Email Address: \_\_\_\_\_

Preferred Username: \_\_\_\_\_

First Name: \_\_\_\_\_

Last Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

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TRKC Additional Response to June 11, 2002 letter from FEC Chairman David M. Mason

EXHIBIT E – Restrictions in Terms & Conditions

26044143647

# FECInfoPro SUPPLEMENTAL TERMS FOR SPECIFIC MATERIALS

## 1. Federal Election Commission

There are restrictions on the use of the data in these downloads of data. The Federal Election Campaign Act, as amended, states that the Commission shall make these documents "available for public inspection and copying, at the expense of the person requesting such copying, except that any information copied from such reports of statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed in order to protect against illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. The Secretary or the Commission shall exclude these lists from the public record."

Raw information on federal campaign contributions and soft money receipts from the Federal Election Commission is available to the public from the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Toll free number 800-424-9530. This information is available to the public in paper, microfilm and electronic formats. This data is available on its Internet web site [www.fec.gov](http://www.fec.gov)

Online Services and Materials does not provide raw federal campaign contribution data except through an Internet link to the web site of the Federal Election Commission. This link is provided to help verify the accuracy of the data.

Online Services and Materials includes enhanced specially coded and cross-referenced money in politics data. Unique identifiers, standard industrial codes, issue codes, cross references, and specialized tabulations, searches, rankings, arrangements of data and proprietary software have been developed by and for Online Services and Materials. Online Services and Materials include unique research, data collection, data coding, and data entry from numerous sources, organizations, and materials. Online Services and Materials includes specially developed updating software and programs to provide immediate updating of files and databases.

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TRKC Additional Response to June 11, 2002 letter from FEC Chairman David M. Mason

EXHIBIT F – Download Restrictions Statement

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PoliticalMoneyLine™

The home of  
**FECInfo**  
and [tray.com](http://tray.com)**DisclosureSenateDownload Payment Form  
Step 1**Description of Data

[Click here](#) to read our General Terms and Conditions.

☐ I agree to the General Terms and Conditions.

**RESTRICTIONS ON THE USE OF DATA  
FOR USE OF THE Downloads SERVICES**

PoliticalMoneyLine regularly makes certain campaign finance information available for free from the Federal Election Commission. In response to requests from the media and academics PoliticalMoneyLine is now providing the capability to download a candidate's file. We feel this service provides a simple selection process, a fast way to retrieve files, and a very usable arrangement of data files.

There are restrictions on the use of the data in these downloads of data. The Federal Election Campaign Act, as amended, states that the Commission shall make these documents "available for public inspection and copying, at the expense of the person requesting such copying, except that any information copied from such reports of statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed in order to protect against illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. The Secretary or the Commission shall exclude these lists from the public record."

☐ I have read the restrictions on the use of the data and will not use the data for any prohibited activity.

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EXHIBIT G – Search System Restrictions

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PoliticalMoneyLine™

The home of

FECInfo

and tray.com

Search  
Databases

ONLINE

Rece

Click Here To Subscribe Now!

## Home

## Candidates

US House Sen and  
Pres Campaigns

## Presidential Races

Politician PACs  
527sDefense Funds  
FoundationsCandidate \$  
Leaders

## Donors

Donor Name  
Lookup

Donor ZIP Lookup

Employer /  
Occupation  
LookupOut of State  
Donors

## PACs &amp; Parties

PAC / Party  
Profiles

Industry Total \$

PAC \$ Leaders

New Corp PACs

Labor Union \$

Illegal Corp \$

## 527 Filers

527 Database

## Foreign Agents

FARA Database

Help

Go Search!

Type in 3 or more letters of the **LAST NAME** (or lastname, firstname) of a person and find out to whom they've contributed

[Limit your items returned by placing a comma right after a the last name. For example, a search for "tune," will supply only those whose last name is Tune, but a search for "tune" gets tune, tuner, tunesmith, etc.]

## Name Search - apply to:

☒ 2002 Election Cycle ☐ 2000 Election Cycle☐ 1998 Election Cycle☐ 2002, 2000, 1998 combined (takes a bit longer...)☐ 1996 Election Cycle ☐ 1994 Election Cycle ☐ 1992 Election Cycle☐ 1990 Election Cycle ☐ 1988 Election Cycle ☐ 1986 Election Cycle☐ 1984 Election Cycle ☐ 1982 Election Cycle ☐ 1980 Election Cycle

The Federal Election Commission records all receipts from individuals who contribute over \$200. This may seem a little intrusive, but those who contribute to Federal campaigns should have been told that their contribution info becomes part of the Public Record.

There are restrictions on the use of the data in these downloads of data. The Federal Election Campaign Act, as amended, states that the Commission shall make these documents "available for public inspection and copying, at the expense of the person requesting such copying, except that any information copied from such reports of statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed in order to protect against illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. The Secretary or the Commission shall exclude these lists from the public record."

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OnlyPAC \$ to  
Congressional  
Comm

107th Congress

106th Congress

Soft Money

2001-2002

1999-2000

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107th Congress

106th Congress

Soft Money

2001-2002

1999-2000

## Find Individual Contributors by Zip Code in the 1980-2000 Databases

Type in a 5 digit zip code and find everyone from that geographic area who has contributed to Federal campaign committees during the election cycle...

☒ 2002 Election Cycle ☐ 2000 Election Cycle

☐ 1998 Election Cycle ☐ 1996 Election Cycle

☐ 1994 Election Cycle ☐ 1992 Election Cycle

☐ 1990 Election Cycle ☐ 1988 Election Cycle

☐ 1986 Election Cycle ☐ 1984 Election Cycle

☐ 1982 Election Cycle ☐ 1980 Election Cycle

Go Search!

Please be patient...this request could take a little time to process...Also note that some 'links' to candidate pages may not work, because those individuals are not "candidates" (i.e., didn't raise or spend \$5000) in the election cycle or were candidates in the previous election cycle

Please remember that zip codes may not be reported for all donors. If this zip code search provides some names of interest, you may want to also look up their name in the "Donor Name Lookup."

The Federal Election Commission records all receipts from individuals who contribute over \$200. You can now search for any name (or part of a last name) to find that individual's contribution pattern.

There are restrictions on the use of the data in these downloads of data. The Federal Election Campaign Act, as amended, states that the Commission shall make these documents "available for public inspection and copying, at the expense of the person requesting such copying, except that any information copied from such reports of statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed in order to protect against illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. The Secretary or the Commission shall exclude these lists from the public record."

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PACs &amp; Parties

PAC / Party  
Profiles

Industry Total \$

PAC \$ Leaders

New Corp PACs

Labor Union \$

Illegal Corp \$

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527 Database

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OnlyPAC \$ to  
Congressional  
Comm

107th Congress

106th Congress

Soft Money

2001-2002

1999-2000

Receive Data

Click Here To Subscribe Now!

**Find Individual Contributors By Employer/Occupation**

Type in 5 or more letters of the Employer/occupation of a person and find out to whom they've contributed during the election cycle:

"Actress", "Actor", "Journalist", "Artist", "Lobbyist", "Author",  
"Musician", and "Economist" are sort of fun...but don't forget corporate  
names like "Microsoft" or "Warner"...☒ 2002 Election Cycle ☐ 2000 Election Cycle☐ 1998 Election Cycle ☐ 1996 Election Cycle☐ 1994 Election Cycle ☐ 1992 Election Cycle☐ 1990 Election Cycle ☐ 1988 Election Cycle☐ 1986 Election Cycle ☐ 1984 Election Cycle☐ 1982 Election Cycle ☐ 1980 Election Cycle

Go Search!

Please be patient...this request could take a little time to process...

The Federal Election Commission records all receipts from individuals who contribute over \$200. Many committees submit their reports without employer/occupation information. Therefore, this list is only as complete as the information submitted to the FEC. How do committees get around the requirement to include this info? They use an exception clause in the law called "Best Efforts". Lately, the FEC has attempted to better enforce the rules concerning "Best Efforts", yet much of this information is never submitted.

There are restrictions on the use of the data in these downloads of data. The Federal Election Campaign Act, as amended, states that the Commission shall make these documents "available for public inspection and copying, at the expense of the person requesting such copying, except that any information copied from such reports of statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed in order to protect against illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. The Secretary or the Commission shall exclude these lists from the public record."

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EXHIBIT H – Restriction on Street Addresses

26044143655

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Step 1**Description of Data

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**RESTRICTIONS ON THE USE OF DATA  
FOR USE OF THE Downloads SERVICES**

PoliticalMoneyLine regularly makes certain campaign finance information available for free from the Federal Election Commission. In response to requests from the media and academics PoliticalMoneyLine is now providing the capability to download a candidate's file. We feel this service provides a simple selection process, a fast way to retrieve files, and a very usable arrangement of data files.

There are restrictions on the use of the data in these downloads of data. The Federal Election Campaign Act, as amended, states that the Commission shall make these documents "available for public inspection and copying, at the expense of the person requesting such copying, except that any information copied from such reports of statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed in order to protect against illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report. The Secretary or the Commission shall exclude these lists from the public record."

Although the Federal Election Commission makes available street addresses of contributors they may have been provided in electronic filings, we have chosen not to include any street address in the download capability.

☐ I have read the restrictions on the use of the data and will not use the data for any prohibited activity.

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TRKC Additional Response to June 11, 2002 letter from FEC Chairman David M. Mason

EXHIBIT I – News Articles Based on TRKC News Content

26044143657



Today: Hazy, 71° mid.  
High 96, Low 72.  
Wednesday: Partly sunny,  
breezy. High 84, Low 64.  
Details, Page B3

125TH YEAR No. 316 M2 DM

# Campaign Finance's New Face

## CEO Taps Employees To Build Powerful PAC

By JIM VANDEHEI  
Washington Post Staff Writer

With the click of a key, Thomas M. Siebel transformed his technology company into a political machine.

Siebel, the brash chief executive officer of software maker Siebel Systems Inc., last year beamed e-mails to hundreds of his most fervent employees with an unmistakable message: Cough up \$5,000 each for the company's new political action committee.

The response was something this town has never seen: Within weeks, more than 350 workers heeded the CEO's call and built the second-largest PAC run by a single corporation in the United States—only UPS's is larger—according to the latest Federal Election Commission records compiled by the nonpartisan PoliticalMoneyLine. The PAC has banked more than \$2.1 million.

With a ban on eye-catching soft money contributions on the horizon, a growing number of corporations are likely to emulate Siebel and turn to employees for greater help influencing policymakers. It's all part of the next generation of fundraising.

"You are going to see companies asking employees who have a stake in the

See SIEBEL, A4, Col. 1

A4 TUESDAY, JULY 9, 2002

S DM VA

NATIONAL NEWS

## CEO Shows New Face Of Political Fundraising

SIEBEL, From A1

survival of the company to make sure that they give at the office," said former representative Randy J. Tate (R-Wash.), who advises a variety of corporate clients on political strategy. "With campaign finance reform, you will see more and more companies getting involved like this, because this is the only way they can give [large contributions], to candidates and parties."

After the fall elections, no longer will CEOs such as Siebel be permitted to simply write the \$100,000-and-up checks that lawmakers take notice of. Campaign finance experts predict this will force corporations to more ag-



FILE PHOTO BY JOHN TODD—ASSOCIATED PRESS

Siebel Systems CEO Thomas M. Siebel solicited \$5,000 employee contributions to build his political action committee.

gressively lean on employees—and non-employees, too—to beef up their company PACs and political muscle.

PACs—political organizations put together by a business, labor union or ideological group to raise and spend money to elect and defeat candidates—are legal, and ubiquitous, but they will be of even greater import when the new law takes effect.

"That's where the action is going to be," said Kenneth A. Gross, a former FEC lawyer who now advises Fortune 500 companies, including Siebel, on campaign finance laws. Gross said PAC managers at many companies already are using the threat of the impending law change "to make the pitch that there is greater need" for help from employees.

National Republican Congressional Committee Chairman Thomas M. Davis III (Va.) predicted that "we'll also see a lot more bundling," whereby multiple employees at a company write checks to a candidate or party that a top executive then delivers.

Under the current law, there are no limits on the amount of soft money that Siebel—or any other corporation, union or individual—can give to political parties. Tom Siebel, for instance, contributed \$250,000 of his own money to last month's \$30 million GOP fundraising gala, according to people familiar with the event.

But the new campaign finance law is designed to purge soft money from the political system. It forbids rich donors from writing limitless checks to political parties, or underwriting "issue ads" campaigns run by Republicans and Democrats.

While the Federal Election Commission has carved out some loopholes through which donors can still dump soft money, corporations—many of which historically shied away from donating to groups outside of the political system—will rely more heavily on PACs and their employees to influence policymakers.

In addition to Siebel, Microsoft, Enterprise Rent-A-Car and Koch Industries Inc., among others, are already receiving many \$5,000 checks from employees, according to PoliticalMoneyLine.

Republican activists are also training companies to activate their employees for more traditional political activities, such as writing and calling politicians, and helping encourage people in their neighborhoods to vote for pro-business lawmakers.

Companies are allowed to solicit "voluntary" contributions from white-collar senior executives. These employees are allowed to give \$5,000 each year to the company PAC, though few currently do. The new campaign finance laws will strengthen existing pro-

visions on companies reimbursing employees for their donations.

It's much harder for CEOs to hit up rank-and-file employees, especially unionized workers, many of whom give a small portion of their annual union dues to fund political activities that overwhelmingly support Democrats. Gross advises his clients to steer clear of blue-collar employees unless they have stock options in the company, which opens them up to solicitations from the CEO or top management.

Of course, it will take a forceful CEO and willing employees, particularly in upper management, to replicate the Siebel model of influence.

Siebel, whose Silicon Valley firm specializes in software that manages customer services, has shown that this approach can turn a company into a major player, virtually overnight.

When Siebel says, "go," all of the employees "get pretty enthusiastic," says Thomas Gann, vice president of the company's government affairs office here. Siebel "is setting the example" other companies should follow, said NRCC Chairman Davis.

Siebel's first real foray into politics came in late 2000, when Rep. Philip M. Crane (R-Ind.) was campaigning to become chairman of the Ways and Means Committee. Crane met with Siebel, who had managed the political campaign of his brother, Daniel B. Crane, for the House years earlier, and asked for help in what had become a fierce fundraising competition among lawmakers vying for chairmanships. Siebel's response: a \$500,000 soft money contribution to the NRCC, the largest ever to that campaign committee.

After several meetings with top Republicans, Siebel, a rare conservative in the liberal bastion of Silicon Valley, decided last year to dramatically step up his efforts, as his company was looking at billions of dollars in government contracts.

He sent e-mails to hundreds of employees outlining his plans for a high-flying PAC and explained the laws that allowed them to contribute the maximum of \$5,000 per year. "We simply followed the rules step by step," said Gann, who lobbied on behalf of Sun Microsystems Inc. before joining Siebel.

As \$5,000 checks were flowing in, the company reworked its products to help the government track potential terrorists and communications among the intelligence agencies. Siebel wants the CIA, FBI and other intelligence organizations to buy its software to help solve the communications breakdowns that have plagued the government.



FILE PHOTO/RY RAY LUSTIG—THE WASHINGTON POST

**Rep. Thomas Davis (R-Va.) predicts "a lot more bundling" of donations.**

The company is lobbying for a chunk of the \$38 billion-plus homeland defense budget, which is expected to grow even larger once the new Department of Homeland Security is created by Congress. Several congressional committees this week are debating the size and structure of the new department, which Siebel believes could become one of its largest customers. The company is also seeking a piece of the federal information technology budget.

Lawmakers, who stand to benefit from the PAC, play a prominent role in deciding which companies get this money. Tom Siebel often demands to meet lawmakers face-to-face to discuss his products before he writes them a check, according to several lawmakers who have talked to him.

The company also received an early boost from a friend in high places: Republican National Committee Chairman Marc F. Racicot, who still sits on Siebel's board of directors, lobbied Homeland Security Director Tom Ridge late last year on behalf of Siebel's products, shortly before becoming RNC chairman.

Siebel himself has met with Ridge, and company officials have privately demonstrated Siebel products to various members of the administration. "We see a lot of activity in a lot different parts in the government," said Gann. Company officials predict that it's biggest chunk of business will come from the government, including the Immigration and Nat-



FILE PHOTO/RY JEFF MITCHELL—REUTERS

**RNC Chairman Marc Racicot sits on Siebel's board of directors.**

uralization Service, the Federal Emergency Management Agency and the Energy Department.

"There is no question that the largest vertical market for what we do will be the public sector," Siebel said last year at a conference in Aspen, Colo.

Company officials said their campaign has already paid dividends: It has been awarded several grants and is well-positioned to land others when the administration divvies up the homeland defense money.

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## ENRON'S COLLAPSE: Examining the Fallout

## THE OVERVIEW

# Enron Sought Help in Obtaining Loans To Stay Afloat, Treasury Dept. Says

Continued From Page A1

said he decided that it would be inappropriate to help.

The company's bankruptcy filing in December was a high-profile bookend to the go-go years of the 1990's. It has set off criminal investigations into both Enron and its auditor, Arthur Andersen & Company, inquiries into how regulators did not expose the problems in Enron's elaborate financial structure, and government reviews of how Enron employees lost much of their retirement savings by loading their 401(k) accounts with company stock.

But over the last few days, Enron's contacts with administration officials as it sought to avert bankruptcy have also become a case study in whether big campaign contributors get preferential treatment.

Administration officials said Enron did not get any special help from them. But Democrats in Congress are gearing up for hearings into the close ties between Enron and Mr. Bush's administration.

In a letter sent to Mr. O'Neill and Mr. Evans today, Representative Henry A. Waxman of California, the senior Democrat on the House Committee on Government Reform, asked whether the administration's contacts with Enron had given them early warnings of the company's financial trouble that could have helped avert big losses for shareholders and employees.

"The purpose of the request," Mr. Waxman's letter said, "is to determine why the administration apparently did nothing to mitigate the harm of the Enron bankruptcy to thousands of its employees and shareholders."

Administration officials said Enron had not provided Mr. O'Neill, Mr. Fisher or Mr. Evans any information that was not already in the newspapers. Asked about the political implications of the case, Ari Fleischer, the White House spokesman, said today "This does not hunt."



Bloomberg News

Peter R. Fisher, an undersecretary of the Treasury, was contacted by Enron before its collapse.

## Disclosures suggest the complexity of a company's dealings with Washington.

summer, Enron was widely viewed as having considerable influence in Washington, and with the Bush administration in particular. Mr. Lay had been one of Mr. Bush's biggest contributors and had worked closely with Mr. Evans in raising money from business executives.

In one example of Enron's influence, Mr. Lay went to the Federal Energy Regulatory Commission's new chairman, Curtis Hebert Jr., earlier this year. According to an account Mr. Hebert gave to The New York Times and the PBS series Frontline, Mr. Lay offered to contribute

Mr. Fisher had played a major role in organizing a rescue by the investment industry of Long Term Capital Management, whose collapse was threatening to ripple through the entire financial system.

According to the White House, Mr. Lay had specifically raised the comparison to Long Term Capital when he spoke to Mr. O'Neill on Oct. 28. Mr. O'Neill then raised the issue with Mr. Fisher, who responded that the comparison was "not apt," Mr. Fleischer said.

As undersecretary for domestic finance, Mr. Fisher has the responsibility of keeping tabs on the financial markets and on developments that might create problems for banks. During the period that Mr. Whalley was calling him about Enron's condition, Mr. Fisher was in regular contact with investment firms about whether Enron's problems would affect the financial system, administration officials and Wall Street executives said.

Enron's credit rating was downgraded on Oct. 29. The Securities and Exchange Commission announced on Oct. 31 that it had opened a full-fledged investigation into whether it had misled investors. Enron was trying to arrange a merger and a line of credit from banks to keep it solvent in the meantime.

Goldman Sachs Group and Morgan Stanley were among the firms contacted by Treasury Department officials weighing the potential implications of Enron's troubles, people at those firms said. Mr. Fisher spoke regularly throughout Enron's disintegration to Lloyd C. Blankfein, a senior executive who oversees Goldman's trading of bonds and commodities, including energy.

Other Treasury officials checked in with credit and trading managers at Morgan Stanley.

But people familiar with those conversations described them as fairly routine and informal and said they did not involve Morgan Stanley's chief executive, Philip Purcell, or Goldman's co-president John A.

## DOLLARS AND CENTS

## Enron's Political Giving

Enron has been a generous political contributor to both political parties, to the Bush presidential campaign and to members of Congress.

### Soft money contributions

■ To Bush presidential campaign by Enron Corp. PAC and employees \$94,875

■ To the Bush-Cheney inaugural gala by Enron, Mr. Lay and his wife, and Mr. Skilling \$100,000 each, for a total of \$300,000

■ Mr. Lay was one of the Bush campaign's pioneers, people who raised at least \$100,000 for the campaign

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\*Includes a \$100,000 contribution to the Democratic Senatorial Campaign Committee made in the fall of 2001. The committee is considering giving the contribution to charity.

Sources: Political Money Line (soft money contributions and contributions to Bush presidential campaign), Center for Responsive Politics (top Congressional recipients, inaugural gala donations)

The New York Times

## TEBOOK

### Bush 0



BY PAUL J. RICHARDS—AGENCE FRANCE-PRESSE

President Bush helps with repairs as he tours a hiking area in the Adirondacks. Harsh winter conditions complicated his Earth Day plans.

But it did not matter. Whiteface Mountain was not visible through the snow. The president was waiting indoors. The networks had iced their "live shots" from the scene. The event, intended to celebrate the great outdoors, would be held in the not-so-great indoors, the ski lodge. No pontoon boats necessary. Bush, who took a quick tour of the park, hammered a couple of nails and tested some water for pollutants. His entourage was assured that the surrounding hills were beautiful—if only they could be seen through the snow.

At noon, when the now-indoors Earth Day celebration was to begin, the room was almost completely empty. The audience, relocated from the outdoor site, was being held downstairs for security screening. Workers on ladders hastily nailed American flags to the wall, covering the skis that had been there. Cameramen assembled their equipment atop plastic cafeteria tables. Young volunteers rushed in with rustic-looking armchairs.

"Thank you for a warm welcome on a snowy day," said the casually tired president when the event began, half an hour behind schedule. Drawing inspiration from the conservationist president, Theodore Roosevelt, Bush spoke of his family's pride at owning a ranch. "For us, every day's Earth Day," he said. "If you own your own land, every day is Earth Day."

## A Downturn in Lobbying

Reported spending on congressional and executive branch lobbying fell to \$790 million during the first half of 2001, from \$831 million in the last six months of 2000, according to a study by PoliticalMoneyLine. One of the reasons for the drop was the completion in 2000 of the successful drive by business groups for passage of China trade legislation. This accounted for the largest drop in spending reported by any single lobby—\$15.9 million—by the Business Roundtable, which led the 2000 trade legislation fight. The biggest spender remained the health

care industry, even though its spending dropped from \$123 million to \$115 million. Within the industry, pharmaceutical manufacturers spent just under \$38 million. The No. 2 spender was the communications and technology industry, at \$108 million. Sprint spent \$4 million; AT&T, \$3.8 million; SBC, \$3.6 million; and Verizon, \$3.5 million. The top lobby shops remained Cassidy & Associates, receiving \$16.3 million, up from \$15.2 million in the last six months of 2000, and Patton Boggs, taking in \$10.1 million, down slightly from \$10.5 million.

— Thomas B. Edsall

Top 10 industries	Amount spent (First half of 2001)	Change (From last half of 2000)
Health care	\$115,317,821	-\$8,023,106
Communication, technology	108,313,295	- 5,029,214
Finance, insurance	100,945,997	- 817,748
Energy, natural resources	73,241,877	2,825,928
Transportation	65,853,475	- 12,056,664
Business, retail, services	47,555,697	- 22,368,769
Manufacturing	38,369,834	1,850,202
Agriculture	31,935,375	194,858
Defense	30,821,459	2,117,213
Single-issue groups	27,914,470	2,548,781

Top 10 companies or groups	Amount spent (First half of 2001)	Change (From last half of 2000)
General Electric	\$7,590,000	-\$4,050,000
American Medical Assn.	7,320,000	-1,440,000
Chamber of Commerce of the USA	6,780,000	-691,000
Edison Electric Institute	6,000,000	0
Pharmaceutical Research & Manuf.	5,780,000	2,280,000
Philip Morris	5,660,000	180,000
Northrop Grumman	5,060,969	2,576,969
American Council of Life Insurers	4,640,000	627,910
American Hospital Assn.	4,620,000	-980,000
National Assn. of Realtors	4,480,000	-380,000

Top 10 lobbyists	Lobbying fees (First half of 2001)	Change (From last half of 2000)
Cassidy & Assoc.	\$16,320,000	\$1,085,000
Patton Boggs	10,132,000	- 348,000
Akin Gump	9,480,000	1,655,000
Verner Lipfert	8,845,000	- 1,090,000
Greenberg Traurig	8,644,999	- 6,734,999
Van Scoyoc Assoc.	6,785,000	1,440,000
Williams & Jensen	5,930,000	1,170,000
Pricewaterhousecoopers	5,860,000	1,460,000
Barbour Griffith & Rogers	5,480,000	605,000
Washington Council Ernst & Young	5,455,000	- 105,000

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The Record (Bergen County, NJ)

August 5, 2001, SUNDAY; ALL EDITIONS

**SECTION:** NEWS; Pg. A1**LENGTH:** 1302 words**HEADLINE:** POLITICAL FUNNEL OF MONEY SKIRTS LAW ;  
FEDERAL RULES LESS STRICT THAN N.J.**BYLINE:** ADAM LISBERG, Staff Writer**BODY:**

At first glance, the law looks solid: You can't give more than \$ 2,000 to a candidate running for federal office, and corporations can't give anything at all.

Look closely, though, and a crack starts to appear: Under the right circumstances, you might be able to write an unlimited number of \$ 2,000 checks to a single candidate from a business checking account, using other people's names.

Is it legal? Maybe, but no one has ever asked the Federal Election Commission to decide. New Jersey and New York City have taken steps to stop the practice.

Is it lucrative? Definitely. Sen. Robert G. Torricelli's reelection campaign collected \$ 154,000 on three days in 1999 from just two real estate executives who wrote checks in the names of their business partners.

One of those executives, Florham Park real estate investor Charles Kushner, used the loophole to donate more than \$ 1 million to candidates and parties in 1999 and 2000.

Campaign finance experts say the loophole, known as "partnership attribution," is one of the murkiest and least-understood areas of political giving. No one tracks how often it is used, and no one knows whether it is on the rise.

"I don't think most people, even active donors, know about these little exceptions in the law," said Larry Makinson, a senior fellow at the Center for Responsive Politics in Washington, D.C. "I don't think this has gotten any attention at all."

1 Partnership attribution is a way for businesses to write checks to federal candidates, something that is usually forbidden. It applies to partnerships and some other types of unincorporated companies, in which the profits and losses are allocated to individual partners.

A partnership is allowed to donate money to a candidate, but the money must be attributed to one or more of the partners, must come out of the partner's share of the profits, and is treated as if it had come straight from the partner's pocket, including the \$ 2,000 limit on

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donations to a single candidate.

But the law never requires that a partner explicitly give permission for another partner to write a check in his name.

That's why Kushner and Richard Kurtz, who runs a real estate management firm in Englewood Cliffs, were able to donate so much to Torricelli. As the controlling partners in dozens of partnerships, they drew \$ 2,000 checks on the accounts of those partnerships and attributed them to dozens of different partners, according to records and interviews.

Kushner delivered an \$ 18,000 bundle of checks to Torricelli's reelection campaign on Jan. 22, 1999, and an additional \$ 74,000 on Feb. 19, 1999, campaign finance reports show. Kushner declined to be interviewed, but a spokesman confirmed that Kushner controlled all of the partnerships involved.

Kurtz gave the campaign \$ 62,000 in checks on March 10, 1999, records show. He told The Record last week that he, not the partners whose names were on the donations, made the decision to contribute.

One of Kurtz's partners, Josh Krantz, first learned from The Record that a donation had been made in his name. Krantz said he was interviewed about the donation last week by the FBI.

An attorney for the Torricelli campaign said last week that any mistakes in Kurtz's donations were based on information he provided, and that the campaign would amend its reports if necessary. A spokeswoman for Torricelli declined to elaborate Saturday.

The \$ 2,000 donation limit, as well as the ban on corporate contributions, is designed to limit the influence any single person or company can have on a politician.

Another fundamental principle of federal campaign finance law is that people are not permitted to donate in other people's names.

Makinson and others said that at first blush, that's exactly what the massive partnership attributions appear to do.

But several campaign finance experts interviewed cannot recall the FEC ever addressing that situation. And investors in a partnership often agree to let a controlling partner decide how to spend money on a wide range of expenses, which could include making political donations.

Trevor Potter, a former FEC chairman, said that leaves open the possibility that a controlling partner could legally make donations in other partners names without informing them first, which would conflict with the prohibition against making donations in other people's names.

"It raises some serious questions," Potter said. "The partnership is acting on your behalf, effectively with or without your consent."

"This is certainly a loophole in the federal law," said Kent Cooper, co-founder of FECInfo, a Web site that tracks political donations. "You'd almost need to see the partnership agreement to see what control that person has."

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Cooper combed through millions of records in his database to discover that the Kushner partnerships had donated more than \$ 1 million to federal candidates in 1999 and 2000.

Most of the donations Cooper found share similar attributes: They were given in the names of partners, they listed the same address as the Kushner Companies office in Florham Park, they were delivered in checks of identical amounts, and they were given on a single day.

Using that technique, Cooper's database shows, Kushner gave \$ 38,000 to Bill Bradley's presidential campaign on June 22, 1999, and then gave \$ 25,000 to Al Gore's campaign on Feb. 10, 2000.

The Kushner companies also gave \$ 68,000 to the campaign of Sen. Hillary Rodham Clinton, D-N.Y., on June 29, 2000; \$ 28,000 to the campaign of Sen. Jon Corzine, D-N.J., on Feb. 24, 2000; and \$ 25,000 to Sen. Charles Schumer, D-N.Y., on April 18, 2000, according to Cooper's database.

None of those donations has raised any unusual attention. Yet when Kushner used similar methods to donate \$ 60,000 from his partnerships to two New York City mayoral candidates last year, the city's 1 campaign finance board ruled that the money should all be considered as having come from Kushner alone.

The campaigns of mayoral hopefuls Alan G. Hevesi and Mark Green returned all but \$ 4,500 of the money, which is the legal limit for individual donations in New York City.

The campaign finance board's June ruling appears to close the partnership loophole in New York City: "Separate limited partnerships, together with a common managing member or general partner, will be considered a single source... for the purpose of calculating contribution limits." New Jersey closed the same loophole years ago. If a donor to candidates for state office wants to write checks under the names of his partners, he must obtain "a signed acknowledgment of the contribution from each contributing partner who has not signed the contribution check," according to the law.

"This approach has been in the regulations for quite some time," said Jeff Brindle, deputy director of New Jersey's Election Law Enforcement Commission. "They have to be notified. They have to sign off on it."

The requirement doesn't seem to have put a crimp in Kushner's donations, however. Kushner partners gave \$ 85,050 to Democrat 1 Jim McGreevey's gubernatorial campaign on Aug. 9, 2000, and according to a campaign spokesman, all the partners signed statements agreeing to the donations.

The McGreevey donations show that while the New Jersey law is a good step, it still doesn't stop one person from steering tens of thousands of dollars to a single candidate, Makinson said.

Kushner "is a guy who wanted to give a lot of money and found a way to do it," he said.

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**GRAPHIC: PHOTO - ROBERT G. TORRICELLI, Big donations from partnerships.**

**LOAD-DATE: August 6, 2001**

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TRKC Additional Response to June 11, 2002 letter from FEC Chairman David M. Mason

EXHIBIT J – Roll Call Article

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# Horn Calls for Audit of FEC Disclosure Systems

By Amy Keller

Rep. Steve Horn (R-Calif.) has asked the Federal Election Commission's inspector general to conduct an internal audit to determine how well the campaign watchdog agency is carrying out its disclosure functions.

"[Particularly request that your review cover how the [FEC] can improve its use of technology and its controls to monitor and remedy reporting discrepancies," Horn wrote in a recent letter to Inspector General Lynne McFarland.

Horn chairs the Government Reform subcommittee on government efficiency, financial management and intergovernmental relations, which in 1998 held hearings on similar issues.

Horn noted in his letter that ongoing research by the independent Project on Government Oversight has shown a persistent problem of "severe discrepancies" between the amounts of money that political action committees reported giving to federal candidates and the amounts that those same candidates reported receiving.

"In 1998, POGO identified \$1.45 million in campaign contributions that were unaccounted for, improperly listed, or otherwise missing within the commission's databases," Horn wrote. "Earlier this year, POGO issued a follow-up report ... that found more than \$12 million in discrepancies, looking only at incumbent candidates."

Moreover, Horn said, that report showed that when PAC and candidate databases were compared, only six incumbents out of the entire Congress matched precisely.

In 1999, PricewaterhouseCoopers conducted an independent audit of the FEC's performance in a number of areas, including disclosure.



File Photo

Rep. Steve Horn has asked the Federal Election Commission's inspector general to examine "severe discrepancies" in campaign finance reports.

Overall, the auditors found that the FEC executed its disclosure and compliance duties "without partisan bias," and that there is a high degree of customer satisfaction with its products and services.

However, the audit report also stated, "Unless the paper-based, manual disclosure processes are changed to a mandatory and fully functional electronic filing system, the current well-regarded FEC disclosure function faces deterioration under the rapidly increasing volume of campaign finance transactions expected in future election cycles."

In recent years, the FEC has dramatically increased its efforts to ease the electronic filing and disclosure of campaign finance re-

ports — a system that officials believe will significantly decrease mistakes, inaccuracies and redundancies in the reporting of campaign financial activity.

Because of a law passed in 1999, virtually all House candidates and political party committees are now filing electronically. That law requires that all "political committees and other persons who are required to file with the [FEC] must file electronically if they have, or have reason to expect to have, aggregate contributions or expenditures exceeding \$50,000 in a calendar year."

Senate campaigns, however, are not required to do so, and the Secretary of the Senate remains the point of entry for all Senate reports.

Some have already suggested tossing out the agency's current structure and creating an FBI-like agency to pursue infractions of campaign finance law, and several lawmakers — including Sen. John McCain (R-Ariz.) — have said they intend to introduce legislation to overhaul the agency.

Bradley Smith, a Republican commissioner, defended his agency in a lengthy article in the Election Law Journal. Smith's article, titled "A Toothless Anaconda: Innovation, Impotence and Overenforcement at the Federal Election Commission," argues against the perception of the agency as "dysfunctional."

"To criticize the Commission for its enforcement record, however, is to make many assumptions, not just about the Commission's work product, but about the actual state of the law and the optimal level of enforcement," Smith wrote in his piece.

The article goes on to state that, in fact, the agency's main problem is not a lack of enforcement but rather "overenforcement" which has placed "a substantial burden on small committees and campaigns" and threatens to have a "chilling effect on some political speech."